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ABSTRACT OF THE PROCEEDINGS

OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS,

1891.

WITH INDEX.

VOLUME XXX.

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TO

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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 2nd January, 1891.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I.
The Hon'ble Lieutenant-General Sir G. T. Chesney, K.C.B., C.S.I., C.I.E., R.E.
The Hon'ble Sir A. R. Scoble, Q.C., K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble Sir C. H. T. Crosthwaite, K.C.S.I.
The Hon'ble Khan Bahadur Muhammad Ali Khan.
The Hon'ble Sir Alexander Wilson, Kt.
The Hon'ble F. M. Halliday.
The Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar, C.I.E.
The Hon'ble Nawab Ahsan-Ulla, Khan Bahádur.
The Hon'ble H. W. Bliss, C.I.E.
The Hon'ble Sir Romesh Chunder Mitter, Kt.
The Hon'ble G. H. P. Evans.

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NEW MEMBER.

The Hon'ble MR. BLISS took his seat as an Additional Member of Council.

SUNDRY BILLS.

The Hon'ble SIR ANDREW SCOBLE moved that the Hon'ble Mr. Nugent be added to the Select Committees on the following Bills:—

Bill to amend the Indian Factories Act, 1881;
Bill to amend the Indian Evidence Act, 1872, and the Code of Criminal Procedure, 1882;
Bill to amend the Indian Christian Marriage Act, 1872;
Bill to amend the Code of Criminal Procedure, 1882; and
Bill to repeal certain obsolete enactments and to amend certain other enactments.

The Motion was put and agreed to.

[*Mr. Hutchins; Sir David Barbour; Sir Andrew Scoble.*] [2ND JAN., 1891.]

CATTLE-TRESPASS ACT, 1871, AMENDMENT BILL.

The Hon'ble MR. HUTCHINS moved that the Hon'ble Mr. Nugent be added to the Select Committee on the Bill to amend the Cattle-Trespass Act, 1871.

The Motion was put and agreed to.

ACTS I OF 1859, VII OF 1880 AND V OF 1883 AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved that the Hon'ble Mr. Nugent be added to the Select Committee on the Bill to amend Acts I of 1859 (*Merchant Seamen*), VII of 1880 and V of 1883 (*Indian Merchant Shipping*).

The Motion was put and agreed to.

MERCHANT SHIPPING ACT, 1880, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR also moved that the Bill to amend the Indian Merchant Shipping Act, 1880, be referred to a Select Committee consisting of the Hon'ble Sir Andrew Scoble, the Hon'ble Sir Alexander Wilson, the Hon'ble Mr. Halliday, the Hon'ble Mr. Nugent and the Mover.

The Motion was put and agreed to.

ACT X OF 1841 AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR also moved that the Bill to amend Act X of 1841 (*Registration of Ships*) be referred to a Select Committee consisting of the Hon'ble Sir Andrew Scoble, the Hon'ble Sir Alexander Wilson, the Hon'ble Mr. Halliday, the Hon'ble Mr. Nugent and the Mover.

The Motion was put and agreed to.

EASEMENTS BILL.

The Hon'ble SIR ANDREW SCOBLE moved for leave to introduce a Bill to provide for the extension of the Indian Easements Act, 1882, to certain areas in which that Act is not in force. He said:—

The Easements Act, passed in 1882, was intended to form part of the Indian Civil Code; and though it was applied in the first instance only to the territories

administered by the Governor of Madras in Council and the Chief Commissioners of the Central Provinces and Coorg, a provision was introduced into the Bill as originally drafted, empowering the Local Government to extend it to any other part of India, by the simple process of a notification in the official Gazette. Exception was, however, taken to the extension of measures of such importance by an executive order instead of by an Act of the Legislative Council; and this provision was dropped, with the result that a regular legislative enactment is necessary in order to apply the Act to any province not originally included within its scope.

The object of the present Bill is to extend the operation of the Act to the presidency of Bombay, and to the North-West Provinces and Oudh. In the former case the extension is asked by the Local Government, with the consent of the High Court; in the latter, the proposal has originated with the High Court, and is supported by the Local Government.

When the Easements Act was under consideration in Council, two objections were raised to it—first, that its language was over-technical and obscure; and secondly, that it was likely to provoke litigation. No doubt an enactment of this kind must employ technical language, but there is no reason to believe that the Judges and professional lawyers, for whose guidance it was primarily intended, have found greater difficulty in understanding it than they would have found in getting at the meaning of any of the well-known treatises on the subject. And as to the second objection, the learned author of the Act, Mr. Whitley Stokes, is, I think, fully entitled to say—"It has worked well, during the last eight years, among the forty millions to whom it applies, and has falsified the prediction that it would give rise to litigation." (The Anglo-Indian Codes, I, 888.)

In this opinion, Mr. Stokes is supported by eminent authority. The Judicial Commissioner of the Central Provinces, where the Act has been in operation from its commencement, "is decidedly of opinion that it has not given rise to litigation." On the contrary, he has "found that the Act was of much advantage in the decision of cases" of the class to which it relates; and that "it is most important that the Courts should have such an enactment to guide them." The Chief Justice of the High Court at Allahabad considers that the extension of the Act to the provinces under his jurisdiction "would be more likely to decrease than to increase litigation." "From the uncertainty as to the law to be applied in such cases," he writes, "litigation is much protracted by appeals, and the rights of the contending parties are not unfrequently finally ascertained only at an expense exceeding the actual money-value of

the easement claimed and contested." Mr. Justice Straight, of the same High Court, observes: "It will be of great advantage to the Subordinate Courts to have a book to which they can go for information, and there find the law of easements crystallized in its most important particulars. I have long felt that there should be some Statute for the guidance of the Courts in dealing with litigation of this kind . . . and I confess I see nothing so fantastic or elaborate in the provisions of the Easements Act as to render it incomprehensible or incapable of construction by the ordinary Judicial Officers."

The Bombay Government, in communicating its consent to the proposed extension of the Act to that presidency, while expressing the opinion that certain of its provisions are not well adapted to Indian circumstances, nevertheless "considers it preferable that the law should be stated in a clear and compendious form, as in Act V of 1882, rather than that it should be gathered with more or less uncertainty from cases decided in England and India."

I have therefore to ask leave to introduce the Bill mentioned in the notice of Motion. The authorities which I have quoted show that it is well calculated to afford much valuable assistance to both Courts and suitors in regard to a difficult, but very important, branch of the law.

The Motion was put and agreed to.

The Hon'ble SIR ANDREW SCOBLE also introduced the Bill.

The Hon'ble SIR ANDREW SCOBLE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Bombay Government Gazette and the North-Western Provinces and Oudh Government Gazette in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Friday, the 9th January, 1891.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 2nd January, 1891.

Government of India Central Printing Office.—No. 447 L. D.—2-1-91.—308.—A. R. deS.

6/6/91.
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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Government House on Friday the 9th January, 1891.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I.
The Hon'ble Lieutenant-General Sir G. T. Chesney, K.C.B., C.S.I., C.I.E., R.E.
The Hon'ble Sir A. R. Scoble, Q.C., K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble Khan Bahádur Muhammad Ali Khan.
The Hon'ble Sir Alexander Wilson, Kt.
The Hon'ble F. M. Halliday.
The Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar, C.I.E.
The Hon'ble Nawab Ahsan-Ulla, Khan Bahádur.
The Hon'ble H. W. Bliss, C.I.E.
The Hon'ble Sir Romesh Chunder Mitter, Kt.
The Hon'ble G. H. P. Evans.
The Hon'ble J. Nugent.

BENGAL SECRETARIAT LIBRARY.

NEW MEMBER.

The Hon'ble MR. NUGENT took his seat as an Additional Member of Council.

CATTLE-TRESPASS ACT, 1871, AMENDMENT BILL.

The Hon'ble MR. HUTCHINS presented the Report of the Select Committee on the Bill to amend the Cattle-trespass Act, 1871.

EASEMENTS BILL.

The Hon'ble SIR ANDREW SCOBLE moved that the Bill to provide for the extension of the Indian Easements Act, 1882, to certain areas in which that Act is not in force be referred to a Select Committee consisting of the Hon'ble Khan Bahádur Muhammad Ali Khan, the Hon'ble Mr. Nugent and the Mover.

The Motion was put and agreed to.

INDIAN MERCHANDISE MARKS ACT, 1889, AND SEA CUSTOMS ACT, 1878, AMENDMENT BILL.

The Hon'ble SIR ANDREW SCOBLE also moved for leave to introduce a Bill to amend the Indian Merchandise Marks Act, 1889, and the Sea Customs Act, 1878. He said:—

"When I introduced the Merchandise Marks Bill in 1888, I took occasion to say that the success of the measure would depend greatly on the extent to which the mercantile community co-operated with the officers of Government in carrying out its provisions, and I expressed the hope that that co-operation would be freely afforded in order to secure the efficient working of the Act without unnecessary friction or expense to the public. The Act has now been in force for nearly two years, and, I believe, I am justified in saying that, like the corresponding Statute in England, it has been beneficial to the commercial interests of the country, and that the Customs-authorities have carried out its provisions with great fairness, and with a due regard to the requirements of honest trade.

"It was to be expected, however, that novel legislation of this kind, which had a tendency to check the rapid delivery of imported goods, would produce at the outset some inconvenience to those whom it was designed to benefit; and representations were made to the Government by mercantile bodies both in England and India that certain difficulties had arisen in regard to the working of the Act, which might be removed without in any way diminishing the protection against fraudulent practices which the Act was intended to furnish. In February last a Committee consisting of three officers of the Government, a representative of the Bengal Chamber of Commerce, and a representative of the Calcutta Trades Association, was appointed by the Governor General in Council for the purpose of considering these representations, and the last paragraph of the report of the Committee, which was submitted in March last, contained the following recommendations:—

'(1) We consider that a section should be inserted in the Act giving power to the Governor General in Council to define from time to time the term "piece-goods." Such an amendment is required to give statutory effect to the regulation we have proposed that only certain goods should be treated as piece-goods.

'(2) It has been suggested to us that it is a hardship to require in section 10 of the Act the name of both place and country on goods not made in the United

Kingdom or British India. We think the objection reasonable and that it is sufficient to require the name of the country. We recommend that section 18 (*e*) be amended accordingly.

'(3) We recommend the insertion in the Act of a section giving the Governor General in Council such a power with respect to yarns and certain other goods as in the case of petroleum is given to the Local Governments by section 8 (*1*) (*e*) of the Petroleum Act, XII of 1886.

'(4) We also recommend the insertion in the Act of a provision similar to that contained in section 125 of the Indian Evidence Act, 1872, as amended by Act III of 1887 We make this suggestion because we think it desirable that Customs Collectors should not be compelled to disclose the names of their informants.'

"The Governor General in Council accepted the suggestions of the Committee; and the object of this Bill is to give effect to those suggestions.

"With regard to the first point, I may say that the provision for stamping the length on all 'piece-goods, such as are ordinarily sold by length or by the piece,' though introduced at the express request of the Chambers of Commerce in this country, has been found to have too wide an application. It is proposed therefore to empower the Government, in making regulations under the Act for the guidance of Customs-officers, to declare what descriptions of goods are to be treated as piece-goods for the purposes of the Act. A list of such goods has been carefully prepared by the Committee, and may be added to, from time to time, as occasion may require.

"Upon the second point, the Indian Act goes beyond the English Statute in requiring both the place and the country in which a foreign article has been manufactured to be indicated. A Parliamentary Committee, which has recently been enquiring into the working of the English Act, has reported that, although the substitution of the words 'made abroad' for the actual indication of the country in which the goods were produced could not be allowed, yet 'the name of the country might be held to be a sufficient indication of origin, without in all cases insisting on the name of the particular place in which the goods were made.' The Bill will, therefore, bring the Indian into conformity with the English law in this respect.

"The third amendment relates to the making of rules for testing whether goods which purport or are alleged to be of uniform number, quantity, measure,

gauge or weight, really answer their description. This is particularly necessary in regard to yarns.

"The last amendment extends to Customs-officers the same protection in regard to proceedings under this Act which they already enjoy with reference to offences against the public revenue. It is, I think, obvious that they should not be compellable to say from whom they have got their information, as otherwise persons would be chary of putting them on the track of breaches of the law."

The Motion was put and agreed to.

The Hon'ble SIR ANDREW SCOBLE also introduced the Bill.

The Hon'ble SIR ANDREW SCOBLE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

INDIAN PENAL CODE AND CODE OF CRIMINAL PROCEDURE, 1882, AMENDMENT BILL.

The Hon'ble SIR ANDREW SCOBLE also moved for leave to introduce a Bill to amend the Indian Penal Code and the Code of Criminal Procedure, 1882. He said:—

"Under section 375 of the Penal Code, the offence of rape is constituted when a man has sexual intercourse with a woman under certain specified circumstances, one of these being when the intercourse takes place, with or without the consent of the woman, when she is under ten years of age. No exception is made in favour of married persons, but, on the contrary, it is provided that sexual intercourse by a man with his own wife, the wife not being under ten years of age, is not rape, that is to say, that her consent will not liberate her husband from the operation of the general law, unless she has attained the age at which consent may be given by women as a class. The proposal in the Bill which I now ask leave to introduce is to raise the age of consent, both for married and unmarried women, from ten to twelve years.

"I think it desirable to state at the outset that no new offence will be created by the Bill. This disposes of the argument, which I have seen put forward in some quarters, that the existence of the marital relation renders it impossible for a man to commit a rape upon his own wife, because it is of the essence of the offence that the carnal knowledge of the woman should also be unlawful and this cannot be the case between husband and wife, because of the matrimonial consent which she has given. That such intercourse may be unlawful under certain circumstances is established by the Penal Code,—it has been the law in India under that Code for more than thirty years,—and the reason for it is thus given by the Indian Law Commissioners:

'There may be cases in which the check of the law may be necessary to restrain men from taking advantage of their marital right prematurely. Instances of abuse by the husband in such cases will fall under the fifth description of rape.'

"I do not suppose that any one will question the right and duty of the State to interfere, for the protection of any class of its subjects, where a proved necessity exists for such interference; and I shall therefore proceed to state briefly the reasons which have led the Government of India to propose this amendment of the law.

"The object of the Bill is two-fold. It is intended to protect female children (1) from immature prostitution, and (2) from premature cohabitation.

"As regards the first aspect of the proposal, which affects all classes of children, Europeans as well as Natives, there can scarcely be any ground of objection. The *Indian Medical Gazette* for September, 1890, states—'Very cursory observation in Calcutta suffices to indicate that females are trained and prepared for a life of vice from a very tender age;' and what is said of Calcutta may, I fear, be said of other parts of the country. The consent of a girl so trained would be a matter of course, and it would be intolerable to allow the reprobate who had ravished her to escape from well-merited punishment on the ground that his victim had consented to the outrage.

"With regard to the second aspect of the proposal, which is equally wide in its scope, the suggestion has been made that to prohibit premature cohabitation is an interference with the religious law of the Hindus. It seems therefore desirable to explain that no interference with the Hindu law of marriage is intended, or will be occasioned, by this measure. The question of child-marriage has been discussed, from both points of view, by men of great erudition and authority: but

it is not necessary for me to attempt to decide between them, for the question of child-mariage is left untouched by this Bill. I will, however, venture to say that, out of all these discussions, two propositions have emerged and stand established. The first is that the sages enjoin, and the custom of many castes requires, that a girl should be given in marriage before she attains puberty; and the second, that the Shastras denounce in the strongest terms, and award the most terrible punishments, both here and hereafter, to the sin of connection with an immature girl. I scarcely think that sufficient stress has hitherto been laid on the latter proposition. In an eloquent appeal to his fellow-countrymen, Pundit Sesadhur Turkachuramoni thus states the orthodox doctrine:—

'It is true we advocate early marriage (but not before the eighth year), but we condemn the custom of cohabiting with a wife before she has attained puberty. We do not support early marriage of boys. We believe it to be a great sin to cohabit with a girl before her puberty, and we believe it to be the terrible cause of our degeneration. We know that Hindu society does not believe this custom to be a great sin, and hence the degradation of the Hindus.'

"It seems to me therefore that I am justified in saying that the teachings of the sacred books of the Hindus are not in conflict with the proposals of the Bill; if modern practice, under the guise of religious observance, disregards and violates those teachings, it cannot be allowed to invoke them to justify its own disobedience to their commands.

"A better argument, or rather an argument that would be better if it were well-founded, is that the Bill is not necessary, in the first place, because the mischief intended to be guarded against is not of common occurrence, and, secondly, because the existing law is sufficient to punish the infrequent cases that occur. I am unfortunately not able to accept either of these contentions.

"Upon the first point I readily admit that the practice is not equally common in all parts of India, and that among the more enlightened classes everywhere it is viewed with increasing disfavour. But as regards Bengal, for instance, Sir Steuart Bayley reports that—

'it is a general practice for Hindu girls, after they are married but before puberty is even indicated, much less established, to be subjected to more or less frequent acts of connection with their husbands. The custom appears to be widespread—less universal among the higher than among the lower classes of Hindus—but it prevails generally over Bengal Proper, especially over Eastern and Central Bengal. It does not extend generally to Behar, nor is it prevalent in Orissa, and the aboriginal tribes are apparently free from it.'

"If this testimony stood alone, I submit, the necessity for legislation would be made out, but there is no doubt that the evil is not confined to Bengal. Where it exists, it should be dealt with as an offence; where it does not exist, the law will have no operation.

"Then, is the law already sufficient? To put it crudely, I should say that a law which permits a full-grown man to violate with precaution a little girl of ten years of age cannot be considered sufficient, except from the ruffian's point of view. 'Female children under the age of puberty,' says Dr. Macleod, in an able paper recently read by him before the Calcutta Medical Society, 'are physically unfit for sexual intercourse, and such intercourse with sexually immature female children, under any circumstances, should be declared an offence punishable by the law.' That is a perfectly intelligible proposition, and is the proposition which I am asking this Council to adopt. But what is the existing law, as laid down by one of the ablest of our Judges in Hari Maiti's case? After pointing out that the law of rape was not applicable, as the girl was over ten years of age, Mr. Justice Wilson goes on to say—

'From that follow certain consequences. One is that, in cases to which the law of rape is not applicable, neither Judges nor juries have any right to do for themselves what the law has not done—I mean not done with reference to girls above the age of ten, that is, to lay down any hard-and-fast line of age, and to say, we think that when sexual intercourse takes place with a female below such an age it is dangerous and must be regarded as punishable, and when sexual intercourse takes place with females above that age it is safe and must be regarded as right. We have no right to do that, because the law has not done it, and therefore in cases of sexual intercourse with females above ten years of age, but of whom it is alleged that they are so immature as to render sexual intercourse dangerous, we cannot take the simple and easy method, as in cases of rape, of enquiring merely into the age of the girl. We have to enquire into all the circumstances of each individual case. And, secondly, when we come to apply the law to the facts of each case, we have no hard-and-fast line drawn for us as in the case of rape, in which the fact of sexual intercourse is the only matter to be enquired into; but we have to do with a wholly different class of evidence, involving many delicate considerations, of intention, of knowledge, of rashness, of negligence and of consequences. . . . . In such cases, we have not to do with any general question as to what is the usual age of puberty, or what we should say, if attempting to lay down a general rule, is the safe age for the consummation of marriage. We have simply to do with the facts of the particular case on the evidence, and to say whether, having regard to the physical condition of the particular girl with whom sexual intercourse was had, and to the intention, the knowledge, the degree of rashness or of negligence with which the accused is shown to have acted on the

occasion in question, he has brought himself within any of the provisions of the criminal law.'

"Now I put it to the Council whether all these difficulties ought to be interposed in the way of giving effectual legal protection to these poor little girls, and whether we ought not to lay down a hard-and-fast line, as the learned Judge calls it, whereby enquiries into cases of this class may be simplified, and the people generally may be brought to understand that the exercise of marital rights must be restrained where restraint is necessary for the protection of the wife. I have already shown that the Legislature has a right to impose such a limit. Again to quote Mr. Justice Wilson,—

'Under no system of law with which Courts have had to do in this country, whether Hindu or Muhammadan or that framed under British rule, has it ever been the law that a husband has the absolute right to enjoy the person of his wife without regard to the question of safety to her.'

"The question then remains—what ought that limit to be?

"The proposal of the Bill is to draw the line at twelve years. This is the age which has been advocated by those who have for many years been endeavouring to educate public opinion on the subject. And there appear to be valid reasons for the recommendation. It is in accordance with the practice which already prevails in some parts of India. In a numerously signed petition from Poona, against raising the age of consent, it is stated that consummation of marriage seldom takes place before the girl is twelve years old. In Madras it is alleged that premature cohabitation is of rare occurrence, and in the Punjab conjugal life ordinarily begins after sexual maturity. The Hindu law, as I have already shown, while enjoining the marriage of girls before they attain puberty, strictly prohibits the consummation of marriage before puberty is attained. According to Muhammadan law 'puberty and discretion constitute the essential conditions of the capacity to enter into a valid contract of marriage.' With both the great divisions of the population in India, the attainment of puberty may be taken as determining the appropriate age for consummation of marriage. When, then, is the period at which in the ordinary course of nature puberty is commonly attained by girls in India? There has been much discussion on this subject among medical men, and many are of opinion that a girl is not competent physically or mentally to give her consent to sexual intercourse until she has completed fourteen years of age. But to adopt this limit would involve too abrupt a fundamental revolution in the social life of India; and to

attempt to enforce it by legislation would almost certainly fail of its object. I prefer to submit for the approval of the Council the more moderate view expressed by Dr. Macleod in the paper from which I have already quoted. Speaking of the period of life at which sexual maturity is attained, he says—

'Hitherto the appearance of menstruation has been held to indicate this epoch in the life of a female; and, allowing for the present that it does so in the great majority of cases, what evidence do we possess regarding the age at which menstruation commences in the females of this country? Sushruta, the Hindu sage and physician, lays down that the menstrual discharge begins after the twelfth year, and that is the age laid down for marriage by the great Hindu law-giver Manu. Dr. Allen Webb collected statistics on the subject, and the result, as stated in his *Pathologia Indica*, was that, "out of a list of 127 Hindu females, menstruation began only in six girls under twelve years of age; and as many of them did not again menstruate until a year after this—which they believed a first appearance—it is probable, as suggested by Babu Modusudan Gupta, that a ruptured hymen would better account for that." I am not aware of any other statistics on this subject, but twelve years may, I think, be accepted as the earliest period of appearance of the menses, and probably thirteen would be a safe average. In England, fourteen years is held to be the most frequent age of menstruation, and it is held by law to be a felony to have sexual intercourse with a girl below that age. Making all due allowance for climatic and racial differences, and bearing social customs in mind, it would seem reasonable and right that the age of protection should be raised in this country from ten to twelve.'

"On the ground, therefore, that the age of twelve years approximately may be considered as the average age for consummation of marriage, both according to law and custom, on the one hand, and, on the other, as the lowest safe age as regards physical fitness, I venture to think that the line may be drawn at that age without doing violence to any respectable social usage, or to the religious law, of any portion of the community. And, though this age may be considered by some too low, it must be borne in mind that, while this amendment of the law will afford absolute legislative protection to girls up to the age of twelve years, the remedies of the existing law in regard to cases of brutality will remain available to girls above that age.

"Two other objections to the proposed amendment of the law remain to be considered. In the first place, it is feared that it may lead to the invasion of the privacy of families by the police, not so much for the detection of crime as for the purpose of extorting blackmail. I have found this apprehension so widely entertained that, whether it is justified or not, I think it deserves consideration. I therefore propose that offences by a man against his own

wife under the amended section shall be non-cognisable, that is to say, that police-officers may not arrest without warrant, but proceedings must be taken by summons, and bail may be accepted. This concession, I hope, will remove all ground of alarm on this account.

"The other objection is that legislative action is not likely to have much direct result. This may be so; but for my part I shall be content if the effect of legislation is mainly educative—if it strengthens the hands of fathers of families for the protection of their daughters, and modifies custom so as to diminish the opportunities and incentives which are now afforded for indulgence in this pernicious practice. I cannot, moreover, forget that it was pointed out long ago by Dr. Chevers that the existing law has done mischief to those whose interests it was designed to protect, by fixing too low an age; and I agree with the late Lieutenant-Governor of Bengal in the opinion that though it may not be probable or even desirable that many cases will be brought into Court, yet, if the enforcement of the husband's rights upon a girl below twelve years of age is stigmatised by the law as rape, and it is publicly recognized that those who abet such assaults render themselves liable to punishment, a great improvement will surely be effected, not only in the condition of the class for whose protection the Bill is primarily designed, but in the physical and social well-being of the people at large."

The Hon'ble SIR ROMESH CHUNDER MITTER said:—"The proposed amendment of the *exception* to section 375 of the Indian Penal Code is likely to cause widespread discontent in the country. If it were necessary to protect child-wives from personal violence, or if it were not a departure from the wise and just policy of the Government not to interfere with the religious rites and duties of any portion of the subjects where such interference is not needed for the repression of crimes, or even if it had the effect of remedying to an appreciable degree the evils of early marriage, I should have been very glad to support it.

"So far as the protection of child-wives from personal violence is concerned, they are now sufficiently protected by the provisions of the existing criminal law.

"A husband under the existing law would be criminally liable for acts which constitute an offence of causing death by doing a rash or negligent act, of hurt simple and grievous or of assault against his wife, even if they were done with her consent if she be under twelve years of age. The existing law

therefore affords sufficient protection to a wife under twelve years of age from violence from her husband.

"The proposed measure would be a departure from the wise and just policy of the Government referred to above, because it would interfere with the religious rites and duties of the orthodox Hindus. I desire to be understood that my observations here apply to the orthodox Hindus domiciled in Bengal Proper. Whether they apply to orthodox Hindus domiciled in other parts of the Empire I cannot say.

"In Bengal Proper the orthodox Hindus are guided by the interpretations of the Shasters given in Rughu Nundun Bhattacharjea's *Ashtubinghastti Tuttos.* Whether these interpretations are correct or not is, I venture to think, a question with which legislators in this country should not concern themselves.

"So long as the orthodox Hindus continue to accept this work as containing a correct exposition of their Shasters, we must look to it to ascertain the views of the Shasters upon any particular subject. It is for the social and religious reformers to discuss whether or not the book in question interprets the Shasters correctly. It is upon this line that the question of the propriety of abolishing early marriage amongst the Hindus is being discussed now. But, as I have said, we must refer to this work to ascertain whether the proposed measure would or would not interfere with the religious rites and duties of the Hindus in certain cases.

"Rughu Nundun, in *Sanscar Tawtwa*, treating of *Garbadhan* ceremony, lays down that the proper period of the consummation of the marriage is when the wife attains the age at which a certain well-known physical condition occurs, and the husband would commit a sin if he does not then consummate it. Now, in this country this physical condition is reached in certain cases before the age of twelve.

"In these cases the orthodox Hindu husbands, if the proposed amendment be adopted, would be placed in this dilemma—either they must break the law or disregard the injunctions of the Shasters. It is true that the hold of the Shasters upon the minds of the educated persons, at least so far as the ceremonial portion is concerned, has been to a great extent loosened, and many educated persons amongst the Hindus do not observe the *Garbadhan* ceremony in their families. But the proportion of such families to the strictly orthodox families in which it is observed is small. Although the former do not ob-

serve this ceremony in their families, still they disapprove of the present measure, because it is a departure from the non-interference policy hitherto observed by the Government and guaranteed by the great Proclamation of 1858, which says :—

'We do strictly charge and enjoin all those who may be in authority under Us, that they abstain from all interference with the religious belief or worship of any of Our subjects on pain of Our highest displeasure.'

"Then again, although it is proposed to make the offence when committed by the husband upon his own wife under the amended section non-cognizable, still it would be liable to be abused and be a source of annoyance and molestation in some cases.

"In villages, where party strifes sometimes rage very high, it is not altogether improbable that a judicial officer might be induced to institute criminal proceedings under this section, his suspicion having been aroused by anonymous communications.

"According to the English law as hitherto laid down in decided cases, a husband cannot under any circumstance commit rape upon his own wife, though this proposition has been incidentally doubted in a recent case in which the particular question did not arise. I am not aware whether in any other civilized country a husband can be held guilty of rape upon his own wife.

"It is an offence which, having regard to the considerations upon which its criminality is founded, a husband should be held incapable of committing. Some of these considerations are obviously the preservation of female chastity and the prevention of indelible disgrace upon the husband and the family to which the outraged female belongs. These considerations cannot apply to a husband.

"It is an anomaly in the Indian Penal Code that a husband under certain circumstances may be guilty of rape upon his own wife. That provision is, however, a dead letter. Since 1860, when the Penal Code was passed, I am not aware of a single conviction under this part of section 375. If the amended section is also likely to prove a dead letter, there is no need for enacting it. If it be, on the other hand, effective in bringing about convictions, even in a small number of cases, the consequences of such convictions upon the marriage relation of the parties would be very deplorable. Could the marriage relation in these cases after the convictions be in any sense happy or cordial? Still the marriages, if they are Hindus, are indissoluble.

1891.] [*Sir Romesh Chunder Mitter; Rao Bahádur K. L. Nulkar.*]

"If any amendment of the Code is needed for punishing an offender who is not the husband of the outraged girl, that may be easily done by substituting twelve for ten in the fifth clause of section 375. It is open to doubt whether, reading section 375 with section 90 of the Code, the age of consent as regards persons other than husbands is not already twelve years. But to remove this doubt there cannot be the slightest objection to any amendment which would raise the age of consent in these cases to twelve. But I venture to think that the proposed amendment regarding the husband's criminality would cause widespread discontent in the country and would be a departure from the policy to which I have referred in the beginning.

"The degree of discontent that is likely to be caused may be, to a certain extent, realized if we take a parallel case. Suppose in Great Britain an endeavour be made by legislation to enforce the custom of cremation instead of burial, on the ground that the former is far better from a sanitary point of view: what would be the state of the feeling of the people? It seems to me that legislation upon subjects like these must wait till the public opinion is sufficiently educated. In this connection I may be permitted to throw out a doubt that the proposed measure is likely to put back reformation in the marriage system of the Hindus, which was being slowly and silently effected. The orthodox and the advanced parties were gradually approaching to a common point of agreement. But the agitation in England has had a very baneful effect upon the prospects of the views of the two parties being reconciled to one another, and the proposed measure, I regret to say, would widen the breach still more.

"These are some of the consequences that I apprehend would follow from the proposed measure. On the other hand, no appreciable benefit would be gained thereby."

The Hon'ble RAO BAHÁDUR KRISHNAJI LAKSHMAN NULKAR said:—"I wish to support the Motion that leave be granted to introduce this Bill, inasmuch as it will afford, to a certain extent at least, protection against physical violation of a class of helpless children among large sections of the population.

"As to the religious objection pointed out by my Hon'ble friend, I doubt not that he must be accepted as one of the best authorities on that point. But I would beg to observe that Hindu religious authorities on such matters are so varied and contradictory that it is often difficult to decide as to which of them

ought to be accepted and followed in preference to others. I am aware that the practice of the Courts of law has been to administer such of the provisions as may be found to be generally received and acted upon by the communities concerned. It must, however, be remembered that this practice has often led to the Courts lending themselves to the sanction of practices directly opposed to justice, equity and good conscience; and consequently the Legislature has often felt it to be its bounden duty to step in and amend the law. In the present instance, granting that the Hindu law, as enunciated by my Hon'ble friend, is really claimed to be strictly and invariably followed in any part of India, it is one of those provisions which I think ought to be disregarded in the interests of humanity. I do not, however, admit that it is of the binding character claimed for it. There are other provisions for which a much greater authority and sanctity could be justly claimed, according to which marriage itself is not lawful until a much higher age than that which the proposed Bill provides as the age of consent for consummation.

"As to the unpopularity of the measure, it is very probable that in certain quarters and in certain sections of society it will be at first viewed with disapprobation, and it may even be made the occasion of false alarm. But I feel certain that such a feeling would be temporary, traceable directly to the false issues raised in the course of the heated controversy which has been going on for some years past between social reformers on the one side and those who claim to be conservatives on the other. It is the country's misfortune that the one party should have often overdone their part by appealing for legislative aid in matters which lie quite outside the ordinary functions of the Legislature, and in which it is the duty of society to provide remedies. The other party has naturally retaliated by crying down any legislation whatever, apparently because it was asked for by their opponents. Indeed, these latter have done some harm by claiming the measure now under consideration as specially belonging to their programme of social reform. As a matter of fact, it has as little direct connection with social reform as any other provision of the Penal Code. It simply seeks to remove a glaring defect in the criminal law of India. This true character of the measure will soon become clear to the public, as they have time to consider its nature and effect calmly and dispassionately; because I feel certain that, but for the fact that it was mixed up by one of the parties to the social reform controversy with their demands for all manner of legislative props to their plans, we should never have heard of any misconception on the subject, much less opposition to such an extremely moderate increase of the age of

consent. Indeed, it is extremely probable that, if twelve or even fourteen years had been provided for in the original Penal Code thirty years ago, it would have passed unchallenged by the general public."

His Excellency THE PRESIDENT said:—"I do not think it necessary to add to what has already been said in defence of the Bill on the table except perhaps to the extent of observing that, while we shall always recognize the high authority which attaches to any observations falling from the lips of our Hon'ble Colleague Sir Romesh Chunder Mitter, the Government of India, for the reasons urged by the Hon'ble Member in charge of the Bill in his opening statement, cannot admit with him that the existing criminal law is sufficient for the purpose of affording protection to those whom we propose to protect under this Bill. Nor can we accept his view that the Proclamation of 1858, which the Government of India regards as in the highest degree obligatory upon it, can be considered as absolutely precluding us from interference, simply because for the purposes of this Bill the same protection is extended to married as to unmarried children. Nor, again, can we join with him in thinking that because there have been no prosecutions under the existing section of the Penal Code with its ten-year limit of age, that section can be regarded as having no effect, or, as I think he described it, a 'dead letter.' I believe that I shall be confirmed by those who are more familiar with Indian legislation than I am when I say that the effect of the law in this country is often valuable quite as much for its educative operation as for any results which it may lead to in the matter of legal proceedings or prosecutions. These, however, are points which can be more conveniently discussed at a later stage in the Bill. My object in now addressing the Council is to place Hon'ble Members and the public in complete possession of the views of the Government of India, not so much with regard to the special question dealt with in this Bill, as with respect to certain other matters which are to some extent connected with it in the mind of the public.

"The Hon'ble Member in charge of the Bill has very properly insisted that it does not in any way affect what may, for convenience sake, be spoken of as the marriage law of this country. There is, as far as I am aware, no social or religious custom, or observance, in force among the Hindu community to which this Bill does the slightest violence. We propose merely to protect from the unquestioned evils of early prostitution, or premature sexual intercourse, that great body of the female children of India which lies between

the age of ten, up to which the present law affords them protection, and the age of twelve, up to which we propose that such protection should be extended. Our measure affects the marriage usage only in so far as this protection extends to a married as well as to an unmarried child. Under the law, as it now stands, no distinction is made between them for this particular purpose, and we do not propose that, as a matter of principle, any such distinction should be introduced now. The immaturity of a young girl does not vary according as she is married or not, and we cannot, therefore, consistently give protection to the one class and deny it to the other. That is the beginning and the end of the connection of the Bill upon the table with the marriage law of India.

"It is, however, within the knowledge of Hon'ble Members—and our Hon'ble Colleague Mr. Nulkar has dwelt with great force upon the point—that the proposal embodied in the Bill has recently been associated with other proposals widely different from it—proposals which do most distinctly affect the marriage law and the religious and social institutions of the Hindus. This association has been so closely maintained that the whole group of questions has come to be regarded as indissolubly connected, and it is inferred that, if the Government of India intends to deal with any one part of the subject, we are to a certain extent committed to deal with the rest.

"I desire to correct this misapprehension, and, if Hon'ble Members will allow me, I propose to place them and the public in full possession of our intentions, and to tell them exactly, not only what we propose to do in regard to the group of proposals to which I have referred, but also what we propose to leave undone.

"The proposals to which I refer, and which have lately been brought prominently under our notice, are to be found in a series of Resolutions lately submitted to the Government of India by an English Committee, numbering amongst its members many persons occupying conspicuous positions in public life, and connected at one time or another with high official employments in this country. It is impossible to feel any doubt as to the sincerity of this distinguished body of reformers, or as to the excellence of the objects at which they are endeavouring to arrive. If we do not entirely agree with them in their conclusions, it is only because, being, as we are, in closer contact than most of them with public opinion here, we realise more fully than they can the extreme gravity

of any steps of which it might be truly said that they involve interference with the religious or social institutions of any large section of the inhabitants of India.

"I will, for the sake of convenience, refer in order to the Resolutions adopted by the Committee, and by it submitted to the Secretary of State for India and the Indian Government.

"The first of these Resolutions is in favour of raising the age of consent to twelve. That is the proposal embodied in our Bill, and I need not refer further to it except for the purpose of mentioning that we decided to take this subject up early in the month of July last, and consequently long before we were aware of the movement which had been set on foot in England.

"I may also point out in passing that, in one most important respect, our Bill, in so far as it affects husbands and wives, affords to them a degree of security against undue or inquisitorial interference which they do not at present possess. It does so in the following way:—My Hon'ble friend has explained that in order to minimise the risk of private persecution, or of blackmailing by the police, the offence dealt with by the Bill has, in all cases where the husband is the person accused, been made non-cognizable. As the law now stands, with the lower limit of age, it is a cognizable offence even if the husband is the person who has committed it. While therefore we have in one sense rendered the law more stringent by increasing the age limit, we have in another sense greatly increased our precautions against an abuse of the law, and given the advantage of this new security to a large number of persons who are at present entirely without it.

"The second Resolution suggests the so-called 'ratification' of infant marriages 'within a reasonable time of the proper age,' with the condition that marriages not so ratified shall be set aside. This proposal has, I understand, received a considerable amount of support in influential quarters. I do not, however, think that those who have advocated its adoption can have realised the tremendous gravity of the step which they recommend. It is no exaggeration to say that such a change in the law would simply revolutionise the social system of the Hindus. We are all aware that in their estimation a marriage contract, no matter at what age it is entered into, is of the most absolutely binding and sacred character. To enact that such a contract should subsequently be made revocable, or, in other words, that the original contract should

become little more than a formal betrothal, would involve an interference with the domestic institutions of the people of India, which neither my colleagues nor I are prepared to admit. To justify such interference upon the ground that it would to some extent assimilate the law in India to what used to be the common law as to child marriage in Christian Europe appears to me to be entirely beside the mark. I am, moreover, altogether at a loss to conceive how such a law, supposing it to have been passed, could be enforced, and I observe that even the authors of the Resolution admit that the change could not be made without consulting native Indian opinion, and that they throw out the further suggestion that, should the proposed change meet with serious opposition, it could, in the first instance, be made binding only on such classes of the community as might formally place themselves under it.

"The third Resolution has reference to the much debated subject of suits for the restitution of conjugal rights. It is urged that such suits in their coercive form are open to serious objection, and that the law under which a decree for the restitution of conjugal rights may be enforced by imprisonment should be amended. The Government of India is invited to 'reconsider the whole subject with a due regard to the marriage law and the habits and customs of the people of India.' I am in a position to say that the Government of India have already, on more than one occasion, given to this matter that reconsideration for which the authors of the Resolution have asked. The subject is one of extreme intricacy, and it would be impossible, within the limits of these observations, to deal with it satisfactorily, but I may say that the result of our enquiries has been to satisfy us that suits for restitution are common only in a few localities, and that in these they are usually confined to the lower classes of society, which naturally regard such suits from a point of view different from that of their superiors in social status. We have therefore had to consider how these classes would be affected were we to deprive them absolutely of any of the remedies which the law now affords.

"Now, it must be borne in mind that in cases where the husband or wife has property, the Court already has power to attach it, and after a limited time to award compensation to the suitor. It can, therefore, only be in cases where there is no property that any necessity can arise for enforcing the decree by imprisonment, and in such cases imprisonment is probably often the only remedy available. We are of opinion that a serious injustice would be done to the poorer classes of suitors, were it to be enacted that under no circum-

stances shall this remedy be resorted to. Such an enactment would encourage lax customs in respect of marriage where the customs are already deplorably lax, and where it should be our object to render the marriage tie more binding than it is at present. Whatever be the opinion of the more educated members of the community, we have no reason to believe that among the poorer classes the enforcement of a decree for restitution by imprisonment of the wife or husband at the discretion of the Court is looked upon by either party as an outrage. We think, however, that the existing law is capable of improvement. At present the law leaves it to the decree-holder to demand imprisonment as a means of enforcing the decree, and, if he does so, the Court has no option. We think that such an option should be given, and that it would suffice if a proviso were inserted in section 260 of the Civil Procedure Code empowering the Court to refuse to consign a recusant wife or husband to imprisonment, or, should the Court order imprisonment, to restrict the term to such period as it might think fit. We do not, however, regard this question as one of immediate or urgent importance, and we propose to deal with it whenever we next have occasion to revise the Civil Procedure Code. We see at any rate no reason for undertaking legislation in regard to this point concurrently with that which will be necessary with reference to the wholly distinct question dealt with in the present Bill.

"The fourth Resolution has reference to the remarriage of widows, and asks that the legal obstacles that still stand in the way of this should be removed. In regard to this, two proposals are made. Of these the first is that we should alter the law as it is expressed in section 2 of Act XV of 1856, under which a widow forfeits her interest in her deceased husband's property on her remarriage. Now there can be no doubt that this section often has the effect of placing a Hindu widow who marries again in a most lamentable position—a position which is all the more pitiable because, as pointed out by the framers of the Resolution, it is a worse position than that of the widow who, without remarrying, leads an unchaste life. The section is, however, one which we are certainly not prepared to repeal. During the course of the long discussions which have taken place in regard to this branch of the subject, nothing has been more clearly established than that the right given to a widow in her husband's estate is one which she enjoys under very strict and special limitations. She is allowed to assume an interest in her husband's property, not as its natural heir, or with the idea that she is to be free to enjoy it in such a manner as she may deem fit, but because

she is regarded as specially responsible for the performance of certain religious acts essential to the well-being of the deceased—acts which she could not adequately perform if by a fresh marriage she were to become the wife of a different person. This aspect of the question was thoroughly considered at the time when the Act of 1856 was discussed in the Legislative Council, and I will venture to read an extract from a speech delivered upon that occasion by Sir James Colville, who has expressed in language more appropriate than any which I can command, and with an authority to which I cannot pretend, what seems to us to be the sound view of the case. Sir James Colville said :—

'The right thus taken by the widow in her husband's estate was a very peculiar one, and very limited in enjoyment. She had not full dominion over the property, for she could not alienate any part of it except for purposes of strict necessity, or for such pious uses as contributed to the spiritual benefit of her husband. In fact, the law gave it to her not for her own benefit, but from the notion that her prayers and sacrifices, and the employment of his wealth in religious and charitable acts, would be beneficial to her deceased husband in another state of existence. If then this Bill had enabled her to carry into the arms of another man, or into another family, the property which she had so acquired, its opponents might reasonably have objected to it, that it would aggravate those mischievous consequences which often flow from the law as it exists, and that, contrary to Hindu law and Hindu feeling, it enabled the widow to enjoy her deceased husband's estate freed from the condition and the trusts upon which alone the law gave it to her.'

"This view of the case is, I apprehend, as sound at the present time as it was when Sir James Colville's words were spoken, and we do not propose to make any departure from the wise policy embodied in the passage which I have just read.

"The second of the alleged obstacles is said to arise from the insufficiency of the protection afforded to widows desiring to remarry under section 6 of the same Act, which runs as follows :—

'Whatever words spoken, ceremonies performed, or engagements made, on the marriage of a Hindu female who has not been previously married, are sufficient to constitute a valid marriage, shall have the same effect, if spoken, performed, or made, on the marriage of a Hindu widow ; and no marriage shall be declared invalid on the ground that such words, ceremonies, or engagements, are inapplicable to the case of a widow.'

This section was obviously intended to afford facilities for such remarriages by giving them validity in spite of any ecclesiastical opposition which they might encounter. These facilities are, however, it is stated, of no avail in consequence of the refusal of the Hindu priests to perform the necessary marriage

ceremonies, and it is suggested tentatively that the State might perhaps provide a form of civil marriage before a Registrar for women desiring to contract a second marriage.

"I am constrained to express my opinion that those who propose to overcome this obstacle by the adoption of such a remedy have altogether underrated the extent of the difficulty with which they have to deal. In order to explain my meaning, I cannot do so better than refer to the manner in which the same point has been dealt with by a well-known writer on Indian subjects who has lately published in the London *Times* a series of papers dealing with these subjects. The writer of these papers sums up his conclusion by advising us not to provide an alternative form of marriage, but to take steps in order to afford protection to individual Hindus who desire to avail themselves of the civil rights already granted to them by British-made Acts against the public penalties inflicted upon them by the Hindu ecclesiastical law, and he explains, in more than one eloquent passage, that the whole of the disabilities under which Hindu women at present suffer in this respect arise from the shortcomings of our legislation, 'which allows the Hindu ecclesiastical law to inflict penalties upon Hindu women for the lawful exercise of their civil rights.' He tells us that the remedy for this state of things 'lies within the power of the Anglo-Indian Legislature,' and that 'the Hindu ecclesiastical law should forthwith be deprived of its power to legally punish women for the lawful exercise of their civil rights.'

"Now I think Hon'ble Members will agree with me that when we speak of Hindu ecclesiastical law, and of legislation for the purpose of depriving it of any of its powers, we should keep before us a clear conception of that which is meant by the expression 'Hindu ecclesiastical law;' and fortunately the writer of the papers from which I am quoting has himself supplied us with an adequate definition, for he proceeds to explain that by the term 'Hindu ecclesiastical law' it is his intention to sum up 'the complex growth of ordinance, usage, and procedure, which forms the religious side of the caste system, as distinguished from its social and commercial aspects.' The struggle therefore upon which the Indian Legislature is invited to embark is a struggle with no less an opponent than the whole system of Hindu religious caste. The hopelessness of such a contest in reference to issues of this kind, even if we were not deterred from it by other considerations, becomes evident if we consider the nature of the penalties by which the edicts of this so-called ecclesiastical law are enforced. What then are

those penalties? We are informed by the same authority that the penalties which the Hindu ecclesiastical law, as thus defined, inflicts upon a couple who have the courage to avail themselves of the Marriage Act of 1856, are threefold. The first of these penalties is, he explains, a social one. The married couple, and such of their friends as have abetted their marriage, are cut off from social and domestic intercourse with their families and caste people. With this penalty the writer frankly admits that 'it would be practically impossible for the British law to interfere.' We may therefore assume that, whatever legislation we may resort to, this penalty, with all its terrors—and it is not easy to over estimate them—will remain in force. It is explained, however, that there are also two religious penalties,—'the woman is denied admission to the temple for the performance of her habitual religious duties, as if she were living in open sin;' and besides this 'an act of excommunication may also issue against the married couple and their abettors, which completely cuts them off from all rights and privileges to which they were entitled as members of a Hindu caste.'

"It is against these penalties that we are asked to protect those who are liable to them, and I gather from what follows that it is intended that such protection shall take the shape of a change in the law which would render any attempt to enforce such penalties punishable under the Penal Code.

"We have anxiously considered this suggestion, and the conclusion which forces itself upon us is, first, that we should not be justified in attempting so far-reaching an innovation as that which would, for example, be involved in compelling the admission of any person to the places of worship of the Hindus in opposition to the religious scruples of the rest of the community. And in the next place we are convinced that any attempt to resort to such legal compulsion would be absolutely illusory so long as the social excommunication, with which it is admitted that we should be powerless to interfere, remains in force. The social and the religious excommunication are two forms of one and the same thing, and, so long as Hindu opinion remains what it is upon these subjects, any attempts to remove either religious or social disabilities in cases such as that under discussion are, we believe, predestined to failure. If any change is to be made in these respects, it must come from within, and not from without, and must be the result of an alteration in the public opinion of the people of this country, and not of a social innovation forced upon them by the British Government. Signs are, I am glad to say, not wanting that, amongst the

more enlightened and better educated classes, such an alteration is already in progress.

"For the reasons which I have given, we do not, with the exceptions upon which I have already touched, propose to proceed in the direction indicated by these Resolutions. We propose for the present to limit ourselves to legislation which, as my Hon'ble friend has pointed out, will not create a new offence, and which will not touch the marriage law. Our object is simply to afford protection to those who cannot protect themselves, protection from a form of physical ill-usage which I believe to be reprobated by the most thoughtful section of the community, which is to the best of my belief entirely unsupported by religious sanction, and which, under the English law, is punishable with penal servitude for life, without any exceptions or reservations.

"I trust that the measure, thus limited and restricted, will receive the support of public opinion, and I cordially commend it to the favourable consideration of the Council."

The Motion was put and agreed to.

The Hon'ble SIR ANDREW SCOBLE also introduced the Bill.

The Hon'ble SIR ANDREW SCOBLE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

INDIAN PORTS ACT, 1889, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved for leave to introduce a Bill to amend and supplement the Indian Ports Act, 1889. He said :—

"Clause (*a*) of section 6, sub-section (*1*), of the Indian Ports Act, 1889, gives Local Governments certain powers for the regulation of ships when entering, or leaving, ports subject to that Act, and clause (*h*) of the same section confers powers for regulating the moving of all vessels when in port. The provisions of the Indian Ports Act of 1889 follow in this respect the provisions of the repealed Act XII of 1875. It has hitherto been held that these

provisions conferred on Local Governments very ample powers for the regulation of the movements of all or any classes of vessels within port limits, but a recent legal decision has thrown doubt on this construction. The Commissioners of the Port of Calcutta bring to notice that the recent decision has seriously limited the powers which were supposed to exist for the regulation of vessels within the ports, and the object of the present Bill is to confer on Local Governments those powers for the regulation of vessels in port which they have hitherto been supposed to possess, and which it is essential that they should possess. The Bill also provides for removing all doubts as to the validity of the rules already issued in connection with this matter, and which have hitherto been held to be in force, by providing that such rules shall be deemed to have been issued under the authority given by the Indian Ports Act as it will now be amended."

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR also introduced the Bill.

The Hon'ble SIR DAVID BARBOUR also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Fort St. George Gazette, the Bombay Government Gazette, the Calcutta Gazette and the Burma Gazette in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Friday, the 23rd January, 1891.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 12th January, 1891.

Government of India Central Printing Office.—No. 463 L. D.—14-1-91.—308.—A. E. deS.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Government House on Friday, the 23rd January, 1891.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I.

His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.

The Hon'ble Lieutenant-General Sir G. T. Chesney, K.C.B., C.S.I., C.I.E., R.E.

The Hon'ble Sir A. R. Scoble, Q.C., K.C.S.I.

The Hon'ble P. P. Hutchins, C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble Sir C. H. T. Crosthwaite, K.C.S.I.

The Hon'ble Khan Bahádur Muhammad Ali Khan.

The Hon'ble Sir Alexander Wilson, Kt.

The Hon'ble F. M. Halliday.

The Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar, C.I.E.

The Hon'ble Nawab Ahsan-Ulla, Khan Bahádur.

The Hon'ble H. W. Bliss, C.I.E.

The Hon'ble Sir Romesh Chunder Mitter, Kt.

The Hon'ble G. H. P. Evans.

The Hon'ble J. Nugent.

INDIAN CHRISTIAN MARRIAGE ACT, 1872, AMENDMENT BILL.

The Hon'ble SIR ANDREW SCOBLE presented the Report of the Select Committee on the Bill to amend the Indian Christian Marriage Act, 1872.

INDIAN MERCHANDISE MARKS ACT, 1889, AND SEA CUSTOMS ACT, 1878, AMENDMENT BILL.

The Hon'ble SIR ANDREW SCOBLE also moved that the Bill to amend the Indian Merchandise Marks Act, 1889, and the Sea Customs Act, 1878, be referred to a Select Committee consisting of the Hon'ble Mr. Hutchins, the Hon'ble Sir A. Wilson, the Hon'ble Mr. Bliss, the Hon'ble Mr. Nugent and the Mover, with instructions to report within one month.

The Motion was put and agreed to.

INDIAN PENAL CODE AND CODE OF CRIMINAL PROCEDURE, 1882, AMENDMENT BILL.

The Hon'ble SIR ANDREW SCOBLE also moved that the Bill to amend the Indian Penal Code and the Code of Criminal Procedure, 1882, be referred to a Select Committee consisting of the Hon'ble Mr. Hutchins, the Hon'ble Khan Bahádur Muhammad Ali Khan, the Hon'ble Rao Bahádur K. L. Nulkar, the Hon'ble Mr. Bliss, the Hon'ble Sir Romesh Chunder Mitter and the Mover, with instructions to report within five weeks.

The Hon'ble NAWAB AHSAN-ULLA said:—"I wish to say a few words in support of the proposed Bill to amend the Indian Penal Code and the Code of Criminal Procedure, 1882.

"From the enquiries which I have made both at Dacca and Calcutta from the leading and learned members of the Muhammadan community whom I have consulted, I believe that the majority of opinion is in favour of the proposed Bill; and that the greater portion of the Muhammadans in Eastern Bengal will regard it favourably.

"Without directly violating or interfering with our religious rights and customs the Bill affords protection and relief to child-wives, and this, I do not hesitate to say, is an extremely necessary and desirable measure. According to the doctrines of our religion we are forbidden cohabitation before the age of puberty, and as far as I have been able to enquire this age may generally be taken to be eleven or twelve. There may be of course a few instances where signs of puberty appear before that age, but they are of such rare occurrence that it is doubtful whether they should be considered.

"There are, I must admit, some few amongst us who regard the proposed amendment with some alarm, not so much, as I understand, on account of its interfering in itself with our religious rights and customs as from an apprehension that the change may be followed by further legislation in this direction which may effect more serious alterations in our religious doctrines; but I am glad to say that this fear has been very greatly allayed by Your Excellency's speech at the last Council meeting; and under these circumstances I beg to support the Bill."

The Motion was put and agreed to.

INDIAN PORTS ACT, 1889, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved that the Bill to amend and supplement the Indian Ports Act, 1889, be referred to a Select Committee consisting of the Hon'ble Sir Andrew Scoble, the Hon'ble Sir A. Wilson, the Hon'ble Mr. Halliday, the Hon'ble Mr. Nugent and the Mover, with instructions to report within one month.

The Motion was put and agreed to.

INLAND STEAM-VESSELS ACT, 1884, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR also moved for leave to introduce a Bill to amend the Inland Steam-vessels Act, 1884. He said :—

"When this Act was being amended last year, certain proposals were brought forward by the Government of Bengal, the proper examination of which by experts and by the persons whose interests they affected would have involved the postponement of the Bill which was then before the Council.

"Postponement was considered undesirable, but when the Bill came before the Council last year I undertook on the part of the Government of India that the proposals of the Local Government should be fully and carefully considered, and that, if it was held to be necessary to make any further change in the law, legislation would be undertaken without delay.

"The proposals made by the Local Government have been duly considered, and it has been decided that in regard to certain matters further legislation is desirable.

"Under the Inland Steam-vessels Act, as it now stands, inland steam-vessels are divided into two classes. The first class comprises steam-vessels having engines of eighty nominal horse-power and upwards. The second class comprises vessels having engines of less than eighty nominal horse-power. The masters and engineers employed on such vessels must hold certain certificates according as they are employed in vessels of the first or second class.

"The division of inland steam-vessels into two classes only has, however, given rise to a serious practical difficulty. The second class is too wide. The certificate which is appropriate in the case of a vessel having engines of (say) seventy-nine nominal horse-power can only be obtained by a person of higher qualifications than are required for the care of a small steam-launch, and the certificate which is appropriate in the case of a small steam-launch is no guarantee of the existence of the qualifications that are required for the charge of a steam-vessel having engines of seventy-nine nominal horse-power.

"It is, therefore, proposed in the present Bill to divide these vessels into three classes, and this will be done by dividing the present second class into two classes, leaving the first class as it now stands. The first class will comprise vessels having engines of eighty nominal horse-power and upwards. The second class will comprise vessels having engines of thirty nominal horse-power and upwards but of less than eighty nominal horse-power. The third class will comprise vessels having engines of less than thirty nominal horse-power. Provision has been made for the issue of appropriate certificates to masters and engineers according as they are deemed competent for service in one or other of these three classes, and in this way we escape from the dilemma of the present law, which compels us either to entrust large vessels to men of whose competence there is no sufficient guarantee, or to enforce the possession of an unnecessarily high certificate in the case of men who are quite competent to manage small vessels.

"Provision has also been made in the Bill to enable Local Governments to satisfy themselves that the holders of certificates for sea-going ships are qualified to act as masters or engineers, as the case may be, of inland steam-vessels. Some such provision is necessary, as under the existing law the holders of certain certificates for sea-going ships are authorized to take charge of inland steam-vessels but cannot be deprived of those certificates in consequence of any failure on their part while in charge of inland steam-vessels."

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR also introduced the Bill.

The Hon'ble SIR DAVID BARBOUR also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Fort St. George Gazette, the Bombay Government Gazette, the Calcutta Gazette and the Burma Gazette in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Friday, the 30th January, 1891.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 23rd January, 1891.

Government of India Central Printing Office.—No. 508 L D.—23 1-91.—308.—A. E. deS.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Government House on Friday, the 30th January, 1891.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I.
His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Lieutenant-General Sir G. T. Chesney, K.C.B., C.S.I., C.I.E., R.F.
The Hon'ble Sir A. R. Scoble, Q.C., K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble Khan Bahádur Muhammad Ali Khan.
The Hon'ble F. M. Halliday.
The Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar, C.I.E.
The Hon'ble Nawab Ahsan-Ulla, Khan Bahádur.
The Hon'ble H. W. Bliss, C.I.E.
The Hon'ble Sir Romesh Chunder Mitter, Kt.
The Hon'ble J. Nugent.

CATTLE-TRESPASS ACT, 1871, AMENDMENT BILL.

The Hon'ble MR. HUTCHINS moved that the Report of the Select Committee on the Bill to amend the Cattle-trespass Act, 1871, be taken into consideration. He said:—

"When I introduced this Bill I explained at length the reasons which have induced the Government of India to undertake an amendment of the Cattle-trespass Act of 1871, and it does not seem necessary that I should recapitulate them afresh. The Council will remember that frequent complaints had reached us from many parts of India that the present law affords very inadequate protection to landholders against agile and semi-wild cattle which are habitually turned out without any sort of restraint to find pasture where they can. This difficulty will be met by section 8 of the Bill as now amended, which empowers Local Governments to extend to other cattle in particular localities the remedy which the Act has already provided generally against damage done by pigs. At the same

time the Local Government may increase the maximum fine, which in the case of pigs is only ten rupees, to fifty rupees. The sum fixed in the Bill as originally drafted was twenty-five rupees, but the Select Committee considered that this would hardly meet such a case as that of trespass by a large herd of buffaloes. The Governments of Bombay and Bengal advised a maximum of one hundred rupees, but we preferred to adopt the more moderate figure suggested from Madras, Coorg and other places. We thought that in those extreme cases where fifty rupees would not afford adequate compensation the injured party might reasonably be left to prosecute his civil remedy.

"The substitution of cattle for pigs was proposed and rejected in 1871, but only as a general provision to have universal application throughout India. As a general rule, I am glad to say that it is still uncalled for, but the opinions submitted with regard to the Bill strongly confirm the conclusion at which we had arrived, that there are many parts of the country in which agriculturists require some more effective protection against the tyranny or recklessness of cattle-owners. In my introductory speech I gave instances from Coorg, from Assam, from Bhinga, from Nagpur and from Orissa; but because some of these places contained planters, and because I mentioned that the most vigorous complaints had emanated from Planting Associations, the Government of India have been accused of promoting legislation in the exclusive interests of a particular class. I will therefore take leave to read to the Council a few of the opinions regarding this particular provision of the Bill, eschewing all places where there are planters or which I mentioned before.

"The first extract which comes to my hand is from the Judicial Commissioner of Oudh, an officer of very great experience. He says:—

'The amendments are in my opinion called for by the inadequacy of the present Act to meet the numerous cases of intentional cattle-trespass which are met with in Oudh, and I doubt not elsewhere. Every District Magistrate will be at one in the opinion that owners of cattle often adopt this measure to repay injury inflicted or in retaliation for a similar trespass on their lands.'

"The next is from Bombay, but the Council are already aware that the Government of that presidency had found it necessary to introduce a Bill of their own on precisely the same lines as this section. The ravages of cattle had become an intolerable nuisance in the raiyatwari districts of Kaira and Ahmedabad, where there are neither planters nor zamindars.

"There are planters in Malabar and the Nilgiris; so I pass them by. No; I

think I must read one short remark made by the Magistrate of the Nilgiris. He says :—

'It is notorious that the cattle-owners in this district, who make a trade of trespass, openly boast that the advantages derived by their herds from nocturnal forays on private estates far outweigh the fines now leviable by the pound-keepers.'

"A Deputy Commissioner in the Punjab writes :—

'The practice of deliberately turning buffaloes into crops has been observed by me in several places, particularly in the neighbourhood of large cities. I remember that great complaints used to be made in the neighbourhood of Delhi against the Gujars on this head. The owners of the injured fields found it impossible to catch and impound the buffaloes. I think there can be no doubt that there is a necessity for making the law of cattle-trespass more stringent.'

"The next extracts which I have made relate to the North-West Provinces. The Deputy Commissioner of Gonda thinks that—

'the addition to section 26 should be extended to the whole of the district and that cattle should be held to include goats and sheep. Goats especially are a great pest as trespassers. They commit great ravages on crops, and especially on young trees, and while the public complain loudly of the damage thus done they are not willing for obvious reasons to go to the Civil Courts for damages.'

"And again—

'It has been lately ascertained that the suburban *gwalas* of Benares deliberately let out all their cows at or soon after dusk when the green rabi crops are standing: the cattle wander away into the fields and fill themselves with green barley: when detected, they are driven to the pound and cheerfully reclaimed by their owners next morning. The men who do this are well known: they deserve to be treated severely.'

"And here is another extract :—

'It is not so much that there are "special localities" in this district where cattle-trespass is encouraged by the owners, for the offence is rampant and universal, but the places which have come more particularly under my notice are Nimkhar and Sitapur itself. The practice is for owners to turn their cattle loose at night to graze. The herd returns in the morning to their homes, where the calves of the cows are always kept tied up; so the cattle are bound to come back. Thakurs, Brahmans, zamindars are the chief sinners. It is another instance of the oppression and tyranny exercised by the zamindars over their tenantry. The latter dare do nothing but wail.'

"But not to be further tedious, I will only select two more from the numerous extracts which I hold in my hand, and I choose these simply because they are the opinions of Native officers. Mr. Dutt writes from Burdwan that—

'cattle are habitually allowed to trespass by particular cattle-owners of more than ordinary influence in a village.'

"And Mr. Gupta, District Judge of Cuttack, has submitted a most important report, in which he enters into the whole case. According to his experience—

'it is the general habit of villagers to let loose their cattle with the fullest knowledge and of set purpose that they might fatten on other people's pasture or crops. In East Bengal this pernicious practice largely prevails, and is the cause of many a murderous riot. Again and again it was proved before me in criminal cases that cattle were turned out by day and often at dead of night to feed on the *kalai* or paddy crops of others. It is extremely difficult to seize all trespassing cattle. One or two may be secured, but the herd usually escape. It is equally difficult to prove deliberate or intentional turning out of cattle on others' lands; and intention must be proved to secure a conviction for mischief under section 426, Penal Code. Section 289 of the Penal Code deals with the negligent owner of an animal dangerous to human life. For negligently letting loose herds of bullocks or buffaloes, even though with the certain knowledge that they would destroy crops, there seems to be no penalty in the law.

'The provisions of section 26 of the Act, amended as proposed, would for the first time supply this omission, and remedy what is now often felt to be a great grievance.'

"It is this danger of affrays which makes the provision of a prompt and summary remedy most imperative, and in petty cases the Magistrate seems to be the proper person to deal with the whole subject. It is quite true, speaking generally, that trespass may result from mere accident and not be inconsistent with good faith and a reasonable respect for the rights of cultivators, but this can hardly be predicated of those exceptional places to which alone this particular provision will be applied: where there is a practice of turning out cattle with the full knowledge that they will feed on crops or garden produce, and generally with the deliberate intention that they shall do so, there is ample justification for a special measure requiring all owners of cattle to keep their beasts under restraint; and, if, with a full knowledge of the probable consequences, any of them omits to do so, I submit that he will be guilty of gross and criminal negligence and that it is not unreasonable to permit his prosecution in the Criminal Courts.

"The only other material amendment which was included in the original Bill is that now contained in section 5. The effect of this will be to enable Local Governments to double the pound-fees in local areas where cattle are habitually allowed to trespass. When I introduced the Bill I pointed out that even double fines would be a very trifling punishment, ranging as they would from one rupee for a buffalo to a couple of annas for that most mischievous animal, a goat; and I also intimated that, in view of the fact that to prevent the possibility of hardship I had reserved power to the Magistracy to remit any amount above the scale of fees prescribed by the Act, I was disposed to think that even a higher maximum than double the standard scale might be permitted. Many authorities supported this suggestion and were in favour of allowing Government to go as high as four times the standard fees; but at the same time strong exception was taken, particularly in Bengal, to the clause reserving power to remit, on the very intelligible ground that it would multiply a trivial class of appeals and prolong disputes unnecessarily. The Committee felt the force of these objections, and after discussion we came to the conclusion that it would be better to withdraw the clause relating to remissions and not to enhance the maximum rates beyond what had been originally proposed. In our opinion the maximum of double fees cannot be regarded as oppressive, and there is really no more reason for providing for a remission of enhanced fees, in those exceptional localities for which they will be sanctioned, than there is for allowing a reduction of the ordinary standard fees elsewhere.

"In the first section of the Bill the Committee has made one slight alteration, which is perhaps of sufficient importance to deserve special notice. Although the Cattle-trespass Act was generally applied in the first instance, power was reserved to Local Governments with the sanction of the Government of India to exclude any special areas from its operation. We thought it unnecessary to retain the words requiring the previous sanction of the Governor General in Council, and henceforth the power of exclusion will be left to the unfettered discretion of Local Governments.

"So much, my Lord, for the provisions of the Bill as introduced. Hon'ble Members, however, will not have failed to notice that it has grown in the hands of the Select Committee from five to thirteen sections, and I have now to explain the eight new sections which have been introduced. Two of these, sections 2 and 9, merely reproduce Act XVIII of 1883, which was substantially an Act to amend the Act of 1871, but not expressly made part of it. We took into consideration

the expediency of revising and re-enacting the whole of the old Act; but it seemed sufficient to re-enact the Act of 1883, and to provide for its incorporation together with the new provisions into the Act of 1871, a reprint of which in its amended form will now be promulgated. Section 11 makes a consequential amendment in the Cantonments Act, and sections 10 and 12 also are merely formal.

"Three other new sections remain, and their object is to provide for the suppression of an objectionable practice, represented as prevailing in some parts of India, of detaining in unauthorized places cattle which ought to be sent to the public pounds. Unlike the original provisions of the Bill, which aimed at the protection of cultivators against depredations by cattle, these sections are designed to secure the owners of cattle against anything like extortion on the part of landowners who may have lawfully seized their animals. The right to seize cattle trespassing is given by Statute, and is necessarily limited by the conditions prescribed in the enactment by which it has been conferred. This is section 10 of the existing Act, where the power to seize animals is coupled with a power to take them without unnecessary delay to the place appointed as a pound. A planter or other person who may find cattle straying on his land may lawfully seize them, but he has no right to keep them longer than is reasonably necessary to enable him to send them to the Government pound. We are told, however, that in Assam—and similar complaints come from Manbhoom and other parts of the country also—it is not unusual for the seizer to keep animals tied up at his residence or other unauthorised place until they are redeemed by payment of such sum as he chooses to demand. Such conduct is clearly illegal, and it is not unlikely to lead to breaches of the peace, as it is conceivable that the owner of the cattle might consider himself warranted in attempting their removal by force. We need not insist on cattle being sent to a distant pound if both parties choose to compound the matter amicably, but it is intolerable that any private person should set up what is practically a private pound or extort fees which have no legal sanction. Accordingly we propose to amend sections 10 and 11 of the Act by limiting the period of detention to twenty-four hours, and we have also extended the scope of Chapter V, which now applies only to cases of illegal seizure, so as to empower the Magistracy to take summary cognizance of complaints of longer detention than twenty-four hours, or indeed of any illegal detention.

"This will remove one of the two substantial grievances which I have seen

put forward on behalf of cattle-owners, and the other does not appear to me to be one for which the Legislature is in any way responsible. I allude to the system of farming out pounds, which at first sight certainly seems to hold out direct encouragement to the contractor to abet or connive at illegal seizure. This system is not recognized by the Cattle-trespass Act, and I think it is opposed to the spirit of the Act, though it may not be expressly prohibited. I propose to address Local Governments in the Home Department in view to suppress the practice wherever it may be found to prevail. As far as I know at present it is confined to certain parts of Bengal.

"I trust I have now made it clear that the object of the Bill was not, and that its effect will not be, to place the owners of cattle at any disadvantage. While we hold them responsible for damage caused by their gross and wilful neglect and provide a prompt and summary remedy against them in places where such neglect is shown to be habitual and such remedy may seem to be called for, we have at the same time done our best to remove every substantial grievance of which they have complained. It has indeed been urged that we ought to make pound-keepers responsible for the proper feeding of animals entrusted to their charge, but those who have put forward this complaint must have forgotten to refer to the Act. Under section 27 any pound-keeper omitting to provide impounded cattle with sufficient food and water, or failing to perform any other duty imposed on him by the Act, becomes liable to a fine of fifty rupees. Wrongful seizure is also summarily punishable, as I have already had occasion to mention."

The Motion was put and agreed to.

The Hon'ble MR. HUTCHINS also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

INLAND STEAM-VESSELS ACT, 1884, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved that the Bill to amend the Inland Steam-vessels Act, 1884, be referred to a Select Committee consisting

of the Hon'ble Sir Andrew Scoble, the Hon'ble Messrs. Halliday and Bliss and the Mover, with instructions to report after one month.

The Motion was put and agreed to.

The Council adjourned to Friday, the 6th February, 1891.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 3rd February, 1891.

Government of India Central Printing Office—No. 542 L D.—4 2-91.—308.—A. E. deS.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Government House on Friday, the 6th February, 1891.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding.*

The Hon'ble Lieutenant-General Sir G. T. Chesney, K.C.B., C.S.I., C.I.E., R.E.

The Hon'ble Sir A. R. Scoble, Q.C., K.C.S.I.

The Hon'ble P. P. Hutchins, C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble Sir C. H. T. Crosthwaite, K.C.S.I.

The Hon'ble Khan Bahádur Muhammad Ali Khan.

The Hon'ble F. M. Halliday.

The Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar, C.I.E.

The Hon'ble H. W. Bliss, C.I.E.

The Hon'ble Sir Romesh Chunder Mitter, Kt.

The Hon'ble G. H. P. Evans.

The Hon'ble J. Nugent.

The Hon'ble J. L. Mackay, C.I.E.

NEW MEMBER.

The Hon'ble MR. MACKAY took his seat as an Additional Member of Council, *vice* Sir Alexander Wilson, resigned.

INDIAN CHRISTIAN MARRIAGE ACT, 1872, AMENDMENT BILL.

The Hon'ble SIR ANDREW SCOBLE moved that the Report of the Select Committee on the Bill to amend the Indian Christian Marriage Act, 1872, be taken into consideration. He said:—

"This Bill, as the Council may remember, owed its origin mainly to suggestions made by the Conference of Anglican Bishops of India and Ceylon held in January, 1888. In introducing it I took occasion to say that it was not the intention of Government to re-open the whole question of Christian marriages in India, and

I deprecated the extension of the discussion, which the Bill was sure to occasion, beyond the limits of the amendments contained in the Bill itself. The Select Committee, to which the Bill was referred, after carefully considering the opinions and proposals submitted to it, arrived at the conclusion that, as the Indian Christian Marriage Act is not at present under general revision, it was better to steer clear of subjects of controversy, and the Bill which I now submit for consideration consequently contains but little new matter.

"There is, however, one important omission. The Bill, as originally drafted, contained a clause providing that before an episcopally ordained clergyman could be permitted to solemnize a marriage within the limits of a diocese he must be acting as a minister with the previous consent in writing of the Bishop of the diocese. This alteration of the law, which was designed to prevent scandal, has been objected to on various grounds, of which I will state two—first, that it assigns to Bishops in India an entirely new legal status with regard to the non-official clergy, who might be compelled under it to obtain a license not merely to solemnize marriages but even to officiate in any other capacity in the diocese—a result which was certainly not contemplated; and, secondly, that, while it would no doubt be beneficial to prevent the evil referred to, the even innocent omission to obtain the Bishop's previous written consent would have the effect of invalidating the marriage, and possibly rendering its offspring illegitimate. The Committee, therefore, recommend that the clause be omitted, as likely to create greater difficulties than those which it was its purpose to remove.

"In a letter from the Revd. Dr. Laing, the Moderator of the Presbyterian Church in Canada, to the Secretary of State for India, it was pointed out that the Indian Christian Marriage Act makes no provision for the marriages of Christian subjects of Native Princes, and such an amendment of the law was solicited 'as will remove all disabilities and uncertainties which deprive all European and Eurasian members of the Presbyterian Church of the rites of the said Church in respect to marriage, and as will also remove the seeming slur cast on ministers labouring in Native States who are permitted to marry as registrars only.' Similar representations have been made by members of other religious bodies, who claim that their ministers should be placed on the same footing in regard to the solemnization of marriages as episcopally ordained clergymen and ministers of the established Church of Scotland. I need, perhaps, scarcely say that the Government of India desires to draw no invidious distinctions, and that the exception made in favour of the clergy of the Churches

of England, Scotland and Rome rest not upon any recognition of them as State Churches, but upon the fact that the 'rules, rites, ceremonies and customs' of those Churches in regard to marriage are laid down by authority, and their ministers are subject to established ecclesiastical discipline, which is not the case in regard to the members of voluntary religious societies, who can only be made amenable to the municipal law, which, while insisting on certain civil formalities being observed in regard to marriages, leaves the religious ceremony to the option of the parties. As regards the Christian subjects of Native States, this Council has no power to legislate; but the influence of the Government has been, and will continue to be, used to procure for them the same advantages as are enjoyed by their brethren in British India. The Select Committee has, however, given power to the Governor General in Council in section 1 of the revised Bill to grant licenses to ministers of religion in Native States to solemnize marriages between Christian subjects of Her Majesty resident in such States. In the same section we have taken the opportunity to get rid of Act XIV of 1884 by incorporating its provisions, and to remove all possible room for doubt as to the validity of existing licenses.

"The Senior Chaplain of the Church of Scotland at Bombay complains that, although he and his brethren have been placed generally on the same footing as episcopally ordained clergymen under the Act, they have not been relieved from the restrictions as to the time for solemnizing marriages, as has been done in the case of clergymen of the Church of England and Roman Catholic priests; and he asks for relief on the ground that in this respect they have the most perfect freedom under the laws of their Church and nation. There is no doubt that this is the case; and the Select Committee have accordingly given effect to the Revd. Mr. Greig's request in sections 2 and 7 of the revised Bill.

"In section 3 we have substituted the words 'where worship is generally held according to the forms of the Church of England' for the words 'belonging to the Church of England,' which is an ambiguous expression.

"In section 4 we have provided for the keeping of register-books either in English, or in the vernacular language in ordinary use in the district or State in which the marriage was solemnized. This is, we think, preferable to the vernacular language of the registrar, who may not be a native of the district, and, if a missionary, may possibly be a German or a Pole.

"Section 5 carries out the recommendation of the Conference of Bishops that a person intentionally taking a false oath, making a false declaration or

signing a false notice or certificate, for the purpose of procuring a marriage or license of marriage, should be rendered liable to punishment under the Indian Penal Code.

"In section 6 provision is made against the solemnization of marriages by unauthorized persons: and in section 8 a discrepancy between sections 52 and 72 of the Act has been corrected.

"By section 9 a penalty is imposed on persons licensed to grant certificates of marriages of Native Christians who without just cause refuse, or wilfully neglect or omit, to perform their duties under the Act. Section 10 is designed to remove a difficulty occasioned by the geographical position of such States as Travancore and Cochin.

"It will be seen from this enumeration that the Select Committee has felt itself at liberty only to accept such of the numerous suggestions laid before it as tend to the smoother and more efficient working of the Act as it stands. We were asked to do much more—to frame, for instance, a table of prohibited degrees of kindred and affinity for Native Christians, to extend the expression 'Native Christians' to all descendants of natives of India converted to Christianity, and to define with precision the personal law applicable to parties seeking to be married under the Act. To have entered upon the enquiries necessary for the determination of such points would have been beyond our province, and could have led to no satisfactory conclusion. Of all kinds of legislation, that in regard to marriage is probably the most difficult, and the most far-reaching in its effects. The Act of 1872 was to some extent a compromise; and little is to be gained, though much might be lost, by disturbing it. I hope the Council will be satisfied with the moderate amendments which have now been introduced, and will not re-open the flood-gates of controversy in regard to its merits or defects as a whole."

The Motion was put and agreed to.

The Hon'ble SIR ANDREW SCOBLE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

6TH FEB., 1891.] [*Sir Andrew Scoble.*]

INDIAN EVIDENCE ACT, 1872, AND CODE OF CRIMINAL PROCEDURE, 1882, AMENDMENT BILL.

The Hon'ble SIR ANDREW SCOBLE also presented the Report of the Select Committee on the Bill to amend the Indian Evidence Act, 1872, and the Code of Criminal Procedure, 1882.

CODE OF CRIMINAL PROCEDURE, 1882, AMENDMENT BILL.

The Hon'ble SIR ANDREW SCOBLE also presented the Report of the Select Committee on the Bill to amend the Code of Criminal Procedure, 1882.

OUDH COURTS BILL.

The Hon'ble SIR ANDREW SCOBLE also moved for leave to introduce a Bill to amend the constitution of the Court of the Judicial Commissioner of Oudh, and alter the Law with respect to Second Appeals and other matters in that Province. He said:—

"The judicial organization of the Province of Oudh, as established by Act XIII of 1879, constitutes the Court of the Judicial Commissioner the Chief Appellate Court, besides vesting in that officer large powers of supervision over subordinate Courts. The course of time has shown that these duties are beyond the powers of a single officer to perform; and in 1885 an Act was passed providing for the temporary appointment from time to time of an additional Judicial Commissioner to assist in disposing of the work. This expedient has been found unsatisfactory, and the object of the present Bill is to provide a Court consisting of two Judicial Commissioners which it is hoped will prove adequate to the growing necessities of the Province. It is intended that for the disposal of certain classes of cases the two Judges shall sit together, and that in case of difference of opinion reference may be made to the High Court of Judicature for the North-Western Provinces.

"Opportunity has also been taken in this Bill to bring the law in regard to second appeals into conformity with that in force in India generally. The expediency of this was strongly pressed by the Local Government in 1879, and Sir Auckland Colvin now 'endorses the opinion of all who have been consulted on the subject that the law should be so far altered as to admit of the right of second appeal from concurring judgments, which at present in Oudh does not

exist.' It is clearly desirable that peculiarities of local procedure, which have ceased to answer their purpose, should be got rid of, and I trust that the effect of this Bill will be to provide for Oudh a Court which will not only be able to dispose satisfactorily of the current work, but will also, in Sir Auckland Colvin's phrase, 'improve the quality of the law administered.'"

The Motion was put and agreed to.

The Hon'ble SIR ANDREW SCOBLE also introduced the Bill.

The Hon'ble SIR ANDREW SCOBLE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the North-Western Provinces and Oudh Government Gazette in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

BANKERS' BOOKS EVIDENCE BILL.

The Hon'ble SIR ANDREW SCOBLE also moved for leave to introduce a Bill to amend the Law of Evidence with respect to Bankers' Books. He said:—

"Under the Indian Evidence Act, it is required that, except in certain specified cases, documents must be proved by primary evidence; and, in a case tried recently in the High Court at Calcutta, the inconvenience of this rule, in regard to entries in bankers' books, was strikingly illustrated. The Chamber of Commerce has applied to the Government of India to extend to banks in India the Bankers' Books Evidence Act, 1879 (42 & 43 Vict., c. 11), by which a relaxation of the rule has been permitted in England, and which provides that a copy of any entry in a banker's book which has been proved to have been examined with the original entry and to be correct shall in all legal proceedings be received as *primâ facie* evidence of such entry and also of the matters, transactions and accounts therein recorded.

"The object of this Bill is to give effect to the recommendation of the Chamber."

The Motion was put and agreed to.

The Hon'ble SIR ANDREW SCOBLE also introduced the Bill.

The Hon'ble SIR ANDREW SCOBLE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

SUNDRY BILLS.

The Hon'ble SIR ANDREW SCOBLE also moved that the Hon'ble Mr. Mackay be substituted for Sir Alexander Wilson as a Member of the Select Committees on the following Bills, namely:—

Bill to amend and consolidate the Law of Bankruptcy and Insolvency in British India;

Bill to amend the Indian Factories Act, 1881;

Bill to amend the Indian Merchandise Marks Act, 1889, and the Sea Customs Act, 1878.

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR moved that the Hon'ble Mr. Mackay be substituted for Sir Alexander Wilson as a Member of the Select Committees on the following Bills, namely:—

Bill to amend Acts I of 1859 (*Merchant Seamen*), VII of 1880 and V of 1883 (*Indian Merchant Shipping*);

Bill to amend the Indian Merchant Shipping Act, 1880;

Bill to amend Act X of 1841 (*Registration of Ships*);

Bill to amend and supplement the Indian Ports Act, 1889.

The Motion was put and agreed to.

The Council adjourned to Friday, the 13th February, 1891.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM,
The 11th February, 1891.

Government of India Central Printing Office.—No. 554 L. D—12-2-91—308—A. E. deS.

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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Government House on Friday, the 13th February, 1891.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I.
The Hon'ble Sir A. R. Scoble, Q.C., K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble Khan Bahádur Muhammad Ali Khan.
The Hon'ble J. W. Quinton, C.S.I.
The Hon'ble F. M. Halliday.
The Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar, C.I.E.
The Hon'ble H. W. Bliss, C.I.E.
The Hon'ble Sir Romesh Chunder Mitter, Kt.
The Hon'ble G. H. P. Evans.
The Hon'ble J. Nugent.
The Hon'ble J. L. Mackay, C.I.E.

EVIDENCE ACT, 1872, AND CODE OF CRIMINAL PROCEDURE, 1882, AMENDMENT BILL.

The Hon'ble SIR ANDREW SCOBLE moved that the Report of the Select Committee on the Bill to amend the Indian Evidence Act, 1872, and the Code of Criminal Procedure, 1882, be taken into consideration. He said:—

"This Bill has met with a good deal of adverse criticism by those who say with the framers of the Act of 1872—'We permit evidence to be given of previous conviction against a prisoner for the purpose of prejudicing him; we do not see why he should not be prejudiced by such evidence if it is true.'

"It seems to me that those who use this argument lose sight of the fact that the object of a criminal trial, according to English law, is not to procure the conviction of the person who happens to be accused of the offence, but to obtain such an investigation of the facts relating to the commission of the offence

as shall secure the conviction of the person who is guilty of it. For this reason a man is presumed to be innocent until he is proved guilty, and defect of facts is not allowed to be supplied by presumptions, unless those presumptions are such as follow irresistibly from the facts proved It is alleged that hereby the chances of a criminal escaping punishment are increased; but the contrary course presents greater evils—laxity of the police in tracing out crime, and a disposition on the part of juries and assessors, and even Magistrates and Judges, to jump at a conclusion unfavourable to the prisoner, because, as one of the opponents of the Bill puts it, 'the man is a blackguard, and is therefore likely to act as one.'

"That the Act in its present form is too wide appears to be very generally admitted, and it is said that in practice full effect is not given to its provisions. The Select Committee, in dealing with the Bill, has restored previous convictions to their proper position in the category of relevant facts, and allows them to be given in evidence when they are facts in issue or relevant under the ordinary provisions of the Act. For the mere purpose of prejudice they are excluded.

"The minor provisions of the Bill have occasioned no criticism, and require no further explanation."

The Hon'ble MR. HUTCHINS said:—"I entirely agree with Sir Andrew Scoble as to the general principle which he has enunciated, but there are two points upon which I wish to offer some observations, as they seem to have been lost sight of by many of the authorities who have not received this Bill with approval.

"The first is that the present law regarding the proof of previous convictions is inconsistent. One part of the law says in the most general way and without any exception that in criminal proceedings the fact that the accused person has been previously convicted of any offence is relevant. That is the rule laid down in 1872 by section 54 of the Evidence Act. Subsequently it was found that unskilled tribunals were apt to jump at conclusions adverse to old offenders, and accordingly section 310 was introduced into the Code of Criminal Procedure. This says that in a trial by jury or with assessors, where the accused is charged with an offence committed after a previous conviction, the part of the charge stating the previous conviction shall not be read out in Court, nor shall the accused be asked whether he has been previously convicted, unless and until he has been convicted of the subsequent offence. In other words, while scrupulously forbidding the jury or assessors to be made acquainted with the

fact that a previous conviction is *alleged*, the law nevertheless allows such conviction to be *proved;* and it makes no attempt to keep back the fact of the previous conviction except in those cases where it has to be formally charged under section 75 in view to the infliction of enhanced punishment. The Bill now on the table modifies both these provisions and will bring them into reasonable consistency.

"The other fact which the opposers of the Bill appear to me to have overlooked is that tendency on the part of jurors and assessors to convict old offenders on insufficient evidence to which I have already alluded. Speaking from many years' experience with juries, I am convinced that this tendency is one of the greatest dangers which beset the jury system in this country. The critics of the Bill say that the fact that the accused is an old offender is always brought out in the police proceedings which the Judge or Magistrate invariably peruses. What then is the use of attempting to conceal it from him? The answer to this is that the risk exists chiefly with regard to what I have ventured to call unskilled tribunals. If Judges and Magistrates alone were concerned I should not greatly object to leave the law as it stands at present; but the law of evidence must be framed on sound and uniform principles. We cannot have one set of rules for skilled officers and another for those who have not had the advantage of any sort of judicial training. Moreover, even with skilled officers it is just as well that the extent to which the former conviction is really a relevant fact, a fact to which they ought to give any weight at all, should be brought prominently before them by a correct rule showing when and for what purpose the former conviction is admissible in evidence."

The Motion was put and agreed to.

The Hon'ble SIR ANDREW SCOBLE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

CODE OF CRIMINAL PROCEDURE, 1882, AMENDMENT BILL.

The Hon'ble SIR ANDREW SCOBLE also moved that the Report of the Select Committee on the Bill to amend the Code of Criminal Procedure, 1882, be taken into consideration. He said:—

"As originally drafted, this Bill proposed, in accordance with a suggestion

made by the Judges of the High Court of Judicature for the North-Western Provinces, to authorise a Magistrate, in any case in which a person accused before him of any offence triable summarily under Chapter XXII of the Criminal Procedure Code was discharged or acquitted, to direct the payment by the accuser to the accused of compensation not exceeding fifty rupees, if the Magistrate was satisfied that the accusation was frivolous or vexatious.

"The object of the Bill has been generally approved by the authorities consulted, but it has been pointed out that it would be much more effectual to check the evil against which it is directed, if its scope were extended so as to legalize the grant of compensation by a Magistrate in every case which he is empowered to try, as distinguished from cases triable only by a Court of Session or a High Court. This suggestion has been so generally made, and is supported by such forcible reasons, that it has been adopted by the Select Committee and the Bill amended accordingly.

"Upon another point also the original draft of the Bill has been modified. In order to prevent hasty and inconsiderate awards of compensation, it was provided that a complainant or informant should be called upon to show cause why compensation should not be directed to be paid. But the objection has been raised that this provision is likely to be construed as directing a separate enquiry, involving adjournments of the case, the calling of witnesses, and consequent delay and expense, entirely out of proportion to the merits. The Select Committee considered that sufficient guarantees against any abuse of the power which the Bill is intended to confer upon Magistrates will be provided by requiring the Magistrate to record and consider any objection which the accuser may urge against compensation being awarded, and to state his reasons in writing when he considers there is sufficient ground for awarding compensation. The provisions of the Bill as to appeals remain unaltered."

The Hon'ble MR. HUTCHINS said:—"This Bill is not unlikely to have a considerable effect on the administration of justice and the statistics of crime. I wish therefore to make a few remarks in support of my hon'ble friend's motion and in further explanation of the extension of the scope of the measure which the Select Committee has recommended.

"I think there is no room for any difference of opinion regarding the main propositions on which the Bill is based. Frivolous and vexatious complaints are of daily occurrence, and have been justly described as one of the curses of the country. It is futile to expect the injured persons to undertake an elaborate

prosecution in a totally fresh proceeding: they have generally had enough of the Law Courts by the time they have secured their own acquittal hence convictions under section 211 of the Penal Code are so rare that they have little effect in stopping false accusations. Some prompter remedy and more effectual check is urgently demanded, and the law has already indicated the direction it should take. For in what are called summons-cases it provides that, if after trial the Magistrate finds that the charge was frivolous or vexatious, he may then and there make an award of compensation. Everyone, I think, agrees as to the expediency of extending this power, and the only question is how far the extension should go. The Bill as originally drafted restricted it to cases in which the offence charged was summarily triable under section 260· as now amended it excludes only those grave offences which are triable solely by a Court of Session.

"My hon'ble and learned friend has told us that the opinions on the Bill received from the various Local Governments and Administrations exhibit a remarkable consensus that the Bill as framed did not go far enough, and after full consideration and discussion the Select Committee has come to the same conclusion. It seems to us that whenever a Magistrate has tried a case, and the result of his enquiry is to fully satisfy him that the charge was vexatiously brought, he ought to be competent to require the accuser to make some amends to the person wrongfully accused, and that nothing short of this is at all likely to prove an effectual check on the pernicious and very prevalent practice of resorting to the Criminal Courts in order to harass an adversary.

"The power is a summary one in one sense, because it is exercised then and there, and upon a person who is not formally put on his trial or sentenced; but the award is to be subject to appeal whenever there would have been an appeal if he had been tried and sentenced to pay the money as a fine. He and his witnesses will have been fully heard, and there will be nothing summary in the way the evidence is recorded, unless indeed the false complainant has himself chosen to make the trial a summary one by alleging an offence which falls under section 260. There is therefore no real reason for restricting the power to complaints of offences mentioned in section 260, and to do this would merely afford a loophole to the ingenuity of those false complainants whom we wish to check.

"My meaning will, perhaps, be made clearer if I give a practical illustration Theft is an offence summarily triable, but robbery, which is theft coupled with violence, is not. Now, one of the commonest of all false charges is robbery

There is perhaps an altercation and a slight scuffle, and one man rushes off to the station-house or the Magistrate, and swears that his antagonist assaulted him, knocked off his turban, which had a few annas knotted in the corner, and made off with it. Had he simply alleged a theft of the turban he might have been required to pay compensation under the Bill as originally framed, but by formulating his complaint as one of robbery he would have practically secured himself against punishment. We should not put it in the power of false complainants to evade their liability to prompt retribution by a judicious selection of a particular section of the Penal Code.

"It is true that this argument, if pressed to its full extent, would prevent the exclusion even of offences which can be tried only by a Court of Session; but there are several grounds upon which these can be distinguished. The Magistrate in these cases does not *try* the offence charged: he simply holds a preliminary enquiry which is in no way conclusive: but where the offence is triable by a Magistrate, if it comes before a first class Magistrate he will fully try it, while if it comes on for hearing before a Magistrate of a lower grade there will be an appeal against any award which he may make. Again, complaints of offences falling within the exclusive jurisdiction of a Sessions Court are comparatively rare. And yet, again, such offences are of so heinous a character that persons falsely accused of them ought perhaps to be compelled to prosecute their accusers formally: at all events we should not promote any measure which may in any way tend to prevent such accusers from being prosecuted to condign punishment.

"Before I conclude I may refer briefly to two objections which have been raised to the Bill as originally framed and which of course apply still more strongly to the extended measure. It is said, in the first place, that there is a danger that the power may be used by a careless or hasty-tempered Magistrate so as to injure innocent accusers. The same possibility exists under the Code as it stands at present, but I have not heard that any bad consequences have resulted: on the contrary, the general complaint is that the power of awarding amends is not exercised at all, not that it has been in any way abused. We have eliminated some of the existing risks by providing an appeal in the case of Magistrates not of the first class. We can, I think, trust our first class Magistrates. They well know that there is a very wide difference between refusing to act on evidence because it is not above suspicion and finding affirmatively that the charge which it supports was frivolous or vexatious. If by any chance a Magistrate should go wrong on this point the High Court can require him to submit

an affirmative finding. I may remind the Council that a power co-extensive with that now proposed to be given was vested in Presidency Magistrates by section 242 of the Presidency Magistrates Act of 1877.

"The other objection rests on the second section of the Penal Code, which says that every person shall be liable to punishment under that Code, and not otherwise, for every act contrary to the provisions thereof. As to this it is only necessary to say that an award of amends is not the same thing as punishment, and does not in any way prevent the person who has paid the compensation being brought to justice under the Penal Code. If the argument were a sound one the existing provision in the Procedure Code which this Bill is to supersede would itself be inconsistent with the Penal Code, and the section in the Presidency Magistrates' Act to which I have just alluded would have been equally inconsistent."

The Motion was put and agreed to.

The Hon'ble SIR ANDREW SCOBLE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

OUDH COURTS BILL.

The Hon'ble SIR ANDREW SCOBLE also moved that the Bill to amend the constitution of the Court of the Judicial Commissioner of Oudh, and to alter the Law with respect to Second Appeals and other matters in that Province, be referred to a Select Committee consisting of the Hon'ble Mr. Hutchins and the Mover, with instructions to report within one month.

The Motion was put and agreed to.

BANKERS' BOOKS EVIDENCE BILL.

The Hon'ble SIR ANDREW SCOBLE also moved that the Bill to amend the Law of Evidence with respect to Bankers' Books be referred to a Select Committee consisting of the Hon'ble Messrs. Bliss, Nugent and Mackay and the Mover.

The Motion was put and agreed to.

INLAND STEAM-VESSELS ACT, 1884, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved that the Hon'ble Mr. Mackay be added to the Select Committee on the Bill to amend the Inland Steam-vessels Act, 1884.

The Motion was put and agreed to.

The Council adjourned to Friday, the 20th February, 1891.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 18th February, 1891.

Government of India Central Printing Office,—No. 592 L. D.—18-2-91.—308.—C. H. L.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Government House on Friday, the 20th February, 1891.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.

The Hon'ble Lieutenant-General Sir G. T. Chesney, K.C.B., C.S.I., C.I.E., R.E.

The Hon'ble Sir A. R. Scoble, Q.C., K.C.S.I.

The Hon'ble P. P. Hutchins, C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble Colonel R. C. B. Pemberton, R.E.

The Hon'ble J. W. Quinton, C.S.I.

The Hon'ble F. M. Halliday.

The Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar, C.I.E.

The Hon'ble H. W. Bliss, C.I.E.

The Hon'ble Sir Romesh Chunder Mitter, Kt.

The Hon'ble G. H. P. Evans.

The Hon'ble J. Nugent.

The Hon'ble J. L. Mackay, C.I.E.

ACT X OF 1841 AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved that the Select Committee on the Bill to amend Act X of 1841 (*Registration of Ships*) be instructed to submit their Report at the next meeting of the Council.

The Motion was put and agreed to.

EASEMENTS BILL.

The Hon'ble SIR ANDREW SCOBLE moved that the Select Committee on the Bill to provide for the extension of the Indian Easements Act, 1882, to certain areas in which that Act is not in force be instructed to submit their Report at the next meeting of the Council.

The Motion was put and agreed to.

[*Sir Andrew Scoble; Sir David Barbour.*] [20TH FEB., 1891.]

INDIAN MERCHANDISE MARKS ACT, 1889, AND SEA CUSTOMS ACT, 1878, AMENDMENT BILL.

The Hon'ble SIR ANDREW SCOBLE also presented the Report of the Select Committee on the Bill to amend the Indian Merchandise Marks Act, 1889, and the Sea Customs Act, 1878.

PORTS ACT, 1889, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR presented the Report of the Select Committee on the Bill to amend and supplement the Indian Ports Act, 1889.

SUNDRY BILLS.

The Hon'ble SIR DAVID BARBOUR also moved that the Hon'ble Mr. Bliss be added to the Select Committees on the following Bills, namely:—

Bill to amend Acts I of 1859 (*Merchant Seamen*), VII of 1880 and V of 1883 (*Indian Merchant Shipping*);

Bill to amend the Indian Merchant Shipping Act, 1880;

Bill to amend Act X of 1841 (*Registration of Ships*).

The Motion was put and agreed to.

The Council adjourned to Friday, the 27th February, 1891.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 20th February, 1891.

Government of India Central Printing Office.—No. 631 L. D.—20-2-91.—308.—R. N. D.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Government House on Friday, the 27th February, 1891.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Lieutenant-General Sir G. T. Chesney, K.C.B., C.S.I., C.I.E., R.E.
The Hon'ble Sir A. R. Scoble, Q.C., K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble Colonel R. C. B. Pemberton, R.E.
The Hon'ble F. M. Halliday.
The Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar, C.I.E.
The Hon'ble H. W. Bliss, C.I.E.
The Hon'ble Sir Romesh Chunder Mitter, Kt.
The Hon'ble G. H. P. Evans.
The Hon'ble J. Nugent.
The Hon'ble J. L. Mackay, C.I.E.
The Hon'ble J. Woodburn.
The Hon'ble Rájá Udai Partab Singh of Bhinga.

NEW MEMBERS.

The Hon'ble MR. WOODBURN and the Hon'ble RÁJÁ UDAI PARTAB SINGH of Bhinga took their seats as Additional Members of Council.

ACTS I OF 1859, VII OF 1880 AND V OF 1883 AMENDMENT BILL.

The Hon'ble MR. BLISS presented the Report of the Select Committee on the Bill to amend Acts I of 1859 (*Merchant Seamen*), VII of 1880 and V of 1883 (*Indian Merchant Shipping*).

ACT X OF 1841 AMENDMENT BILL.

The Hon'ble MR. BLISS also presented the Report of the Select Committee on the Bill to amend Act X of 1841 (*Registration of Ships*).

[*Sir Andrew Scoble; Sir David Barbour.*] [27TH FEB., 1891.]

EASEMENTS BILL.

The Hon'ble SIR ANDREW SCOBLE presented the Report of the Select Committee on the Bill to provide for the extension of the Indian Easements Act, 1882, to certain areas in which that Act is not in force.

INDIAN PENAL CODE AND CODE OF CRIMINAL PROCEDURE, 1882, AMENDMENT BILL.

The Hon'ble SIR ANDREW SCOBLE also moved that the presentation of the Report of the Select Committee on the Bill to amend the Indian Penal Code and the Code of Criminal Procedure, 1882, be deferred until the next meeting of the Council. He explained that all the reports from the Local Governments had not yet been received, but he hoped that they would come in before the next meeting of the Council.

The Motion was put and agreed to.

PORTS ACT, 1889, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved that the Report of the Select Committee on the Bill to amend and supplement the Indian Ports Act, 1889, be taken into consideration. He said—

When introducing this Bill I explained that its object was merely to confirm and place beyond doubt the powers for the regulation of vessels when in port which local authoiities had hitherto been held to possess, and which it was essential that they should possess.

"No objection has been raised to the provisions contained in the Bill, and the Select Committee recommends that it be passed in the form in which it was introduced."

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR also moved that the Bill be passed.

The Motion was put and agreed to.

OUDH COURTS BILL.

The Hon'ble SIR ANDREW SCOBLE moved that the Hon'ble Mr. Woodburn and the Hon'ble Rájá Udai Partab Singh of Bhinga be added to the Select Committee on the Bill to amend the constitution of the Court of the Judicial Commissioner of Oudh and alter the Law of Second Appeals and other matters in that Province.

The Motion was put and agreed to.

The Council adjourned to Friday, the 6th March, 1891.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 4th March, 1891.

Government of India Central Printing Office—No 677 L D—5-3-91—308—J N. D

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Government House on Friday, the 6th March, 1891.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I.
His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Lieutenant-General Sir G. T. Chesney, K.C.B., C.S.I., C.I.E., R.E.
The Hon'ble Sir A. R. Scoble, Q.C., K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble Colonel R. C. B. Pemberton, R.E.
The Hon'ble F. M. Halliday.
The Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar, C.I.E.
The Hon'ble H. W. Bliss, C.I.E.
The Hon'ble Sir Romesh Chunder Mitter, Kt.
The Hon'ble J. Nugent.
The Hon'ble J. L. Mackay, C.I.E.
The Hon'ble J. Woodburn.
The Hon'ble Rájá Udai Partab Singh of Bhinga.

FACTORIES ACT, 1881, AMENDMENT BILL.

The Hon'ble SIR ANDREW SCOBLE presented the Report of the Select Committee on the Bill to amend the Indian Factories Act, 1881.

INDIAN PENAL CODE AND CODE OF CRIMINAL PROCEDURE, 1882, AMENDMENT BILL.

The Hon'ble SIR ANDREW SCOBLE also presented the Report of the Select Committee on the Bill to amend the Indian Penal Code and the Code of Criminal Procedure, 1882.

ACTS I OF 1859, VII OF 1880 AND V OF 1883 AMENDMENT BILL.

The Hon'ble MR. BLISS moved that the Report of the Select Committee on the Bill to amend Acts I of 1859 (*Merchant Seamen*), VII of 1880 and V of 1883 (*Indian Merchant Shipping*) be taken into consideration. He said :—

"Since this Bill was introduced a year ago, a considerable number of suggestions regarding it have been made by the Local Governments and others consulted and interested. So far as these suggestions dealt with merely formal matters or raised new questions, on which the opinions of those concerned had not been requested, it seemed in most cases preferable to let them stand over for the general consolidation of the Acts dealing with merchant shipping which is under contemplation. The Select Committee has, however, made several additions to the Bill as originally drafted.

"One of these is that provision has been made for the grant to officers of the Indian Marine who have not passed the examinations for officers prescribed by Act I of 1859, or by the English Statutes dealing with this matter, of certificates of service entitling them to occupy such positions as masters, or mates, of foreign-going ships as their rank in the Indian Marine, and the departmental examinations they have passed therein, show them to be qualified for.

"Another amendment of the law, and one of some importance, is proposed to be effected by section 3 of the revised Bill. The existing law on the subject of running agreements with the crews of merchant vessels making voyages not exceeding six months in duration is contained in sections 23 and 32 of Act I of 1859, and provides that all such agreements shall terminate on the 30th of June or 31st of December next following. This provision was taken from the English Statute, and was, it is believed, intended for the protection of seamen by the limitation of the terms for which they could legally bind themselves to serve. In practice, however, the operation of this provision of law on the engagement of the crews of home-trade ships making short voyages has been found most inconvenient, for it releases all their crews from service simultaneously, so that twice a year such Companies as the British India Steam Navigation Company have great difficulty in arranging for the engagement of crews for their ships which happen to come into port on or about the dates above-mentioned. The lascars all disperse to their homes, and for some time, on both occasions, it is impossible to secure competent hands to man the ships which are waiting to go to sea. The same difficulty

was apparently felt in England, for by the Statute mentioned in the Committee's Report the law was some years ago amended, and the requirement that running agreements should terminate on fixed dates no longer insisted on in the case of home-trade ships the crews of which had signed agreements in a form specially provided by the Board of Trade for the purpose. The Committee was of opinion that the complaints of ship-owners on this subject were reasonable, and has therefore proposed to adopt in this respect the provision of law which is in force in England. In such cases, therefore, if the Committee's recommendation is approved by the Council, seamen's agreements will terminate at periods not exceeding six months from the date of their execution, not simultaneously on fixed dates twice a year. The men will enjoy an equal measure of liberty, while the convenience of their employers will be consulted and the safety of the public be promoted by the improvement of the facilities for the engagement of competent crews.

"Section 5 of the revised Bill is intended to restore the law to the state in which it was when Act I of 1859 was passed, when the Straits Settlements were under the Government of India, that is, to include in the term "home-trade" voyages to the Straits Settlements, as well as to ports still, as then, under the Government of India and in Ceylon.

"Section 6 of the revised Bill has been found necessary in order to compliance with the terms of a Convention, recently accepted by the Secretary of State with respect to India, between the Governments of Her Majesty and of the French Republic, in regard to the disposal of wrecks occurring on the coasts of the respective dominions of the contracting Powers. The Convention is printed as a schedule to the Bill.

"Section 9 of the revised Bill is also new. It follows the English law in vesting with the necessary powers of enquiry the officers whose duty it is to report to Local Governments the occurrence of casualties to ships, of a nature to render formal investigation by a Marine Court desirable.

"The effect of section 14 of the revised Bill, which has been introduced on the recommendation of the Board of Trade and of other authorities, is to empower Courts holding enquiries into marine casualties to deal with all the certificates which the master or other officer of the vessel may hold, whether under the law under which the enquiry is held or under that of any other British possession. Under the law as it now stands, such a Court might determine to cancel or suspend the British certificate of an officer found to blame, but is un-

able to deal with an equivalent certificate held by him under the law of, for instance, one of the Australian Colonies. He would therefore remain legally qualified to serve on board a British merchant vessel in the capacity for which he held the Australian certificate, and the sentence of the Court would so far be of no effect. It is intended that in future no officer in the mercantile marine shall be capable of acquiring more than one certificate of the same grade, but in the meantime it is necessary to provide that the cancellation or suspension of any certificate held by such an officer shall equally apply to all certificates of the same grade of which he may be in possession.

"The other amendments proposed by the Select Committee are merely verbal and do not require explanation."

The Motion was put and agreed to.

The Hon'ble MR. BLISS also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

ACT X OF 1841 AMENDMENT BILL.

The Hon'ble MR. BLISS also moved that the Report of the Select Committee on the Bill to amend Act X of 1841 (*Registration of Ships*) be taken into consideration. He said:—

"The Select Committee has not found it necessary to make any material modifications in the Bill as originally introduced by my hon'ble friend Sir David Barbour. The only alterations requiring notice are the following:—

"It was pointed out by more than one of the authorities consulted that the form of certificate of survey prescribed in the schedule to the Merchant Shipping Act of 1854 was obsolete, a new form having been substituted for it by one of the orders which the Board of Trade is empowered to make in respect of this and other matters under the several Merchant Shipping Acts in force in England. The Committee therefore deemed it advisable to require the use in the case of British Indian ships of the form now in use in the United Kingdom for the survey of British ships, which is set out in a schedule for the convenience of the persons concerned. The Committee has also provided for the alteration of this form as from time to time found necessary under the orders of the Governor General in Council; and for the applicability to surveys of British Indian ships

of the orders issued by the Board of Trade under the Statutes in force in England, as well as of the rules contained in the Statutes themselves. The survey of British Indian ships will therefore in future be conducted on exactly the same system as is at the time in force in England, except in regard to the accommodation which ship-owners are required to provide for seamen. In this respect the provisions of the English are more liberal than those of the Indian law, and in the case of lascars are probably unnecessarily liberal. However this may be, it did not seem advisable to alter the law upon this point by a side wind or without giving full notice of the intended change to the ship-owners whose interests the alteration would affect. The provisions of Act I of 1859 dealing with this matter have therefore been saved in amended sections 9 and 10 of the Act. In amended section 11 the Governor General in Council has been substituted for the Local Governments as the authority vested in India with the powers of the Board of Trade in England in regard to the measurement of ships. This change was necessary to insure uniformity of action throughout the maritime provinces. Two sections have been added to the Bill with the object of vesting the Maritime Local Governments generally with the powers conferred by the Act on the Governor of Fort William in Bengal and on the Governments of Presidencies, and of incorporating in this Act the definition of the words 'Local Government' embodied in all laws enacted since 1867."

His Honour THE LIEUTENANT-GOVERNOR said:—"I wish to make a few brief remarks on one point connected with this Bill.

"In section 6 of the Bill a small amendment is made in section 17 of Act X of 1841. There was, however, another alteration in that section which the Government of Bengal had proposed. The original section (17) enacted that—

'It shall not be lawful for any owner or owners of any ship or vessel to give any name to such ship or vessel other than that by which she was first registered in pursuance of this Act.'

"The attention of the Bengal Government was drawn to the inconvenience arising from the impossibility of obtaining any alteration in the name of a vessel once registered. The point was particularly brought forward by the shipping interest of Chittagong, and their views were represented by the Port Commissioners at that place, and supported by the Bengal Government, which pointed out that in the English Merchant Shipping Act of 1871 power is given to the Board of Trade to consent to the changing of the name of any British ship. The way in which the Chittagong shipping interest was specially affected was that it might not unfrequently happen that a Muhammadan ship might be

purchased by a Hindu owner, or *vice versâ*, and the new owner might wish to change its name, and there seemed to be no reason why a power of this kind should be refused.

"I regret that the Select Committee did not agree to accept this very small alteration. I understand that the principal reason was that an opportunity had not been given for other Maritime Governments to be consulted on the subject, and that it was considered more in accordance with the precedents of the Legislative Department that no action should be taken on this suggestion on the present occasion, but that in the amending and consolidating Bill, which will soon be undertaken for bringing together all the law relating to merchant shipping, notice will be taken of the suggestion now made. I bow to that view, and would only ask that I may receive a definite promise that that Bill may be undertaken at an early date, and that this small grievance may be removed as soon as possible. I trust that my hon'ble friend the Finance Minister will be able to assure me that the point will be taken up and considered in his Department as early as possible."

The Hon'ble SIR DAVID BARBOUR said:—"The question to which the Hon'ble Sir Charles Elliott refers came before the Select Committee, and, although there appeared very little objection to giving power to alter the names of vessels, it was considered inexpedient to make any change without consulting other Governments Occasionally old vessels are purchased for a mere song; they are painted and taken to another part of the country and may be used in a way which is hardly legitimate, and this practice will be facilitated if power is given to change the name.

"As regards giving a promise to consider the question when a Bill is introduced to consolidate the Merchant Shipping Law, I can only say that the Government is considering whether consolidation can conveniently be carried out. But this question of consolidating the Merchant Shipping Law has been und r consideration, I think, for the last five and twenty years. It is an extremely difficult one, and it depends very much on the progress of consolidation at home. I hope that a Bill will be introduced before long, but I am quite unable to give a definite promise to take up the question next session. If a Bill should be introduced to consolidate the existing law, I have no doubt that the suggestion of the Bengal Government will receive due consideration."

The Motion was put and agreed to.

The Hon'ble MR. BLISS also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

EASEMENTS BILL.

The Hon'ble SIR ANDREW SCOBLE moved that the Report of the Select Committee on the Bill to provide for the extension of the Indian Easements Act, 1882, to certain areas in which that Act is not in force be taken into consideration. He said :—

"The object of this Bill is to extend to the Presidency of Bombay and the North-Western Provinces and Oudh the provisions of the general Act in regard to easements which is already in force in various other parts of British India. The extension has been approved by the Local Governments and the High Courts in both cases."

The Motion was put and agreed to.

The Hon'ble SIR ANDREW SCOBLE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

The Council adjourned to Friday, the 13th March, 1891.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 11th March, 1891.

Government of India Central Printing Office.—No. 3 L. D.—12-3-91.—308.—A. F. de C.

13/3

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Government House on Friday, the 13th March, 1891.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding.*

His Honour the Lieutenant-Governor of Bengal, K.C.S.I.

His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.

The Hon'ble Lieutenant-General Sir G. T. Chesney, K.C.B., C.S.I., C.I E., R.E.

The Hon'ble Sir A. R. Scoble, Q.C., K.C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble Colonel R. C. B. Pemberton, R.E.

The Hon'ble F. M. Halliday.

The Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar, C.I.E.

The Hon'ble H. W. Bliss, C.I.E.

The Hon'ble G. H. P. Evans.

The Hon'ble J. Nugent.

The Hon'ble J. L. Mackay, C.I.E.

The Hon'ble J. Woodburn.

The Hon'ble Rájá Udai Partab Singh of Bhinga.

INDIAN MERCHANDISE MARKS ACT, 1889, AND SEA CUSTOMS ACT, 1878, AMENDMENT BILL.

The Hon'ble SIR ANDREW SCOBLE moved that the Report of the Select Committee on the Bill to amend the Indian Merchandise Marks Act, 1889, and the Sea Customs Act, 1878, be taken into consideration. He said:—

"The provisions of the Bill embody the recommendations of a Committee of Government officers and mercantile experts which was appointed in February last year to consider the working of the Indian Merchandise Marks Act, and whether any amendments were necessary to secure its smooth and efficient operation. Those recommendations received the general approval of the commercial community, and have been adopted without alteration by the Select Committee. An additional clause has, however, been added to the Bill, at the

suggestion of the Karachi Chamber of Commerce, for the purpose of making the abetment in India of a breach of the Act committed elsewhere an offence cognizable by the tribunals of this country. This is a very useful and necessary provision, and will no doubt be accepted by the Council."

The Motion was put and agreed to.

The Hon'ble SIR ANDREW SCOBLE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

REPEALING AND AMENDING BILL.

The Hon'ble SIR ANDREW SCOBLE also presented the Report of the Select Committee on the Bill to repeal certain Obsolete Enactments and to amend certain other Enactments.

INLAND STEAM-VESSELS ACT, 1884, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR presented the Report of the Select Committee on the Bill to amend the Inland Steam-vessels Act, 1884.

OUDH COURTS BILL.

The Hon'ble SIR ANDREW SCOBLE presented the Report of the Select Committee on the Bill to amend the constitution of the Court of the Judicial Commissioner of Oudh, and alter the Law with respect to Second Appeals and other matters in that Province.

His Excellency THE PRESIDENT then said:—

"I propose, if convenient to hon'ble members, that the Council should adjourn to Thursday, the 19th instant. Upon that day we should take the Age of Consent Bill and the Factories Bill. I would suggest that we should hold another sitting on Saturday, the 21st instant, and I hope that on that occasion we may be able to dispose of the remainder of the business before the Council.

"I understand that the Financial Statement of our hon'ble colleague Sir David Barbour will be ready for publication next week. I am afraid that this year we shall not be able to give the Council an opportunity of discussing the

statement. Hon'ble members are aware that the terms of the Indian Councils Act render such a discussion impossible, unless financial legislation of some kind is proposed. The statement of our hon'ble colleague does not involve any such legislation, nor is there before the Council any Bill in connection with which the financial situation could be discussed

"Hon'ble members will recollect that last winter, and the winter before, we took advantage of the passage of two comparatively unimportant measures, which indirectly affected the Budget, in order to bring on a general financial discussion. I am afraid that that course is not open to us this year. Hon'ble members will no doubt have observed that the Secretary of State has already introduced into Parliament his Bill for amending the Indian Councils Act, and there is every reason to hope that it may become law during the present session of the British Parliament. Should that anticipation be realised, this will be the last session of the Legislative Council which will take place without a full discussion of the financial situation and the financial proposals of the Government of India."

The Council adjourned to Thursday, the 19th March, 1891.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 16th March, 1891.

Government of India Central Printing Office.—No. 38 L. D.—16-3-91.—308.—A. E. deS.

5/6/91.
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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Government House on ~~Friday~~ Thursday, the 19th March, 1891.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I.
His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Lieutenant-General Sir G. T. Chesney, K.C.B., C.S.I., C.I.E., R.E.
The Hon'ble Sir A. R. Scoble, Q.C., K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble Colonel R. C. B. Pemberton, R.E.
The Hon'ble F. M. Halliday.
The Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar, C.I.E.
The Hon'ble H. W. Bliss, C.I.E.
The Hon'ble G. H. P. Evans.
The Hon'ble J. Nugent.
The Hon'ble J. L. Mackay, C.I.E.
The Hon'ble J. Woodburn.
The Hon'ble Rájá Udai Partab Singh of Bhinga.

BENGAL SECRETARIAT LIBRARY.

INDIAN PENAL CODE AND CODE OF CRIMINAL PROCEDURE, 1882, AMENDMENT BILL.

The Hon'ble SIR ANDREW SCOBLE moved that the Report of the Select Committee on the Bill to amend the Indian Penal Code and the Code of Criminal Procedure, 1882, be taken into consideration. He said:—

"I very much regret to say that I have received a letter from my hon'ble friend Sir Romesh Chunder Mitter in which he says that the state of his health is such that he will be unable to attend the meeting of the Council to-day. Had his indisposition been of a merely temporary character, I should have been prepared, with Your Excellency's permission, to have moved that the discussion of the question involved in this Bill should be postponed for a few days: but, as

I understand that there is no likelihood of my hon'ble friend being able to take part in the further consideration of the measure, I can only reiterate the expression of my regret that the Council will not have his assistance in dealing with the important question which forms its subject.

"The discussion which has taken place with regard to this Bill during the last ten weeks has had many good effects. It has shown, among other things, that outside Bengal there is very little real opposition to the measure, that in Bengal itself the extent and importance of the opposition have been by no means so great as has been represented, and that as regards the objections raised to the Bill its supporters have everywhere had very much the best of the argument. It has elicited from all parts of India expressions of abhorrence of the practice which the Bill is designed to prohibit; and it has established that the practice, though undoubtedly prevalent in certain districts, is not found to exist elsewhere except in isolated cases. And, if I may judge from the minute of dissent which my hon'ble friend Sir Romesh Chunder Mitter has appended to the Report of the Select Committee, it has satisfied him that the bulk of the arguments with which he assailed the Bill, on the occasion of its introduction into this Council, are not tenable, and must be abandoned. As, however, the key-note which my hon'ble friend struck on the former occasion has been followed by most of the speakers and writers who have attacked the Bill, and it is desirable that an answer should be given to arguments which have been enforced by the authority attaching to his name, I fear I must occupy the Council for some time in going over the old ground, and showing how slight is the foundation, either in fact or reason, upon which the objections to the Bill are based, and what little justification there is for the outcry which has been raised against it.

"It will doubtless be remembered that in introducing the Bill I spoke of it as a measure of protection, which it was the clear right and duty of the Government to adopt if the necessity for State interference was established. I did not perhaps dwell on this part of the case as fully as I might have done, for it seemed to me a self-evident proposition that little girls under the age of twelve are unfit for sexual intercourse, and ought not to be subjected to it. I considered it sufficient to rely on the report of Sir Steuart Bayley that in Bengal 'it is a general practice for Hindu girls, after they are married, but before puberty is even indicated, much less established, to be subjected to more or less frequent acts of connection with their husbands;' and upon the question of their fitness for such intercourse I quoted the professional opinion of

Dr. Macleod that, 'making all due allowance for climatic and racial differences and bearing social customs in mind, it would seem reasonable and right that the age of protection in this country should be raised from ten to twelve years.' Having thus established a *primâ facie* case for the proposed legislation, I reserved further proof until my statement should be challenged; and, though the challenge has been indirect rather than direct, it must be met. It is said that 'the plea of humanity does not avail'; that the case of Hari Maiti was an isolated case; and that 'the patent fact that many girls in this country become mothers before or immediately after twelve plainly shows that there is necessarily no inhumanity in the act itself.' My hon'ble friend Sir Romesh Chunder Mitter, while assuming for the purposes of his argument that 'the rule of premature intercourse with girl-wives exists to a culpable extent in Bengal,' states that this assumption, so far as his knowledge of Hindu society in Bengal goes, is not fairly tenable. I can understand my hon'ble friend's reluctance to admit the existence of a state of things so degrading to his countrymen, and I should have been glad had I been able to accept his testimony on the point. But what are the facts as stated in official documents which have been laid before the Council? Mr. Lyall, Commissioner of Chittagong, reports: 'The practice of consummating marriage with immature girls is universal in this division, as it is all over East Bengal. It is less common among Muhammadans, but is universal among all castes and classes of Hindus. Every one consulted admits this, whether in favour of reform or against it.' Babu Nobin Chunder Sen, a Deputy Magistrate in the Chittagong Division, writes: 'Being a native of this division, I may assure you that the practice of consummating marriage with immature girls is universal in this division. It is not confined to any particular section or caste.' Mr. Allen, Magistrate of Noakhali, reports: 'The practice among Hindus of this district of consummating marriages with immature wives is, I fear, widespread.' Mr. Dutt, Collector of Burdwan, states that 'the practice of consummating marriage with immature girls prevails generally and widely in this district. From my own knowledge I can also assert that the practice prevails widely and generally in Calcutta and in other parts of Bengal.' Mr. Lowis, the Commissioner of the Rajshahye Division, says: 'I have consulted the district officers and others, and find a consensus of opinion as to the existence of the practice of consummation of marriage with immature girls throughout the division, except perhaps in the Jalpaiguri District, where the Meches and other aboriginal tribes do not favour child-marriage, and where, amongst the Muhammadans and Rajbungshis, females, being useful in field work, are not generally married until they are more ad-

vanced in age.' Mr. Gupta, the Collector of Mymensingh, says: 'The practice of consummating marriage before girls attain puberty exists to a certain extent in this district, as more or less in all parts of Bengal; but generally it is more prevalent among the lower than among the higher castes of Hindus.' Mr. Quinn, the Commissioner of Bhagulpore, reports as the result of his enquiries that 'among the lower classes of Hindus, and also of Muhammadans though perhaps to a less extent, there is no doubt that the consummation of marriage with immature girls is of frequent occurrence. Girls are sent to their husbands' house at a very early age, and often long before menstruation has begun, and when there no restriction is placed on the husband, the natural consequence being that sexual intercourse must frequently take place while the wife is quite immature.'

"There is no gainsaying this evidence. It establishes the existence in Bengal of a horrible practice, condemned alike by the Hindu religion and by the commonest feelings of humanity, and with which the present law is powerless to cope in any adequate way. The records of the Criminal Courts are full of cases in which child-wives, between the ages of ten and twelve, have been done to death in the exercise of marital rights by their husbands. There must be no misapprehension on this point. It has been stated that the case of Hari Maiti is an isolated case, and my hon'ble friend asserts that 'after the most searching enquiry not a single case resulting in conviction of a husband for rape during the last thirty years has been found out.' My hon'ble friend is particular in his choice of words, for prosecutions have not always been followed by convictions and rape has not always been the charge. But I will give him some recent instances of the class of cases which to my mind justify the proposed alteration in the law. In the Sessions Court at Rangpur in March, 1890, Dhula Nasga was tried for rape of his wife; the defence was that the girl was not under ten years of age: the Judge gave effect to this defence, though he said 'the case is a painful one, the girl, or more correctly speaking child, asserting that the accused, who is a full grown man, forcibly had sexual intercourse with her, stifling her cries by putting a cloth in her mouth,' and the man was sentenced to three months' rigorous imprisonment. At Hooghly, in December, 1889, Jamirudin was charged with having caused the death of his wife Parijan, and the Magistrate, Mr. Mullick, dismissed the case on the ground that, 'as Parijan was between eleven and twelve years of age, the accused committed no offence by having sexual intercourse with her, and is not answerable for the consequences which unfor-

tunately followed it.' At Maldah, in May, 1889, Panchu Monim was tried in the Court of the Sessions Judge for culpable homicide not amounting to murder. The medical evidence indicated that the girl died from strangulation accompanying forcible sexual intercourse. The husband was twenty-one years of age, the wife about eleven. One assessor, a pleader, held that 'the deceased died accidentally, through her husband's trying to have forcible intercourse with her.' 'I don't think he is guilty,' he added, 'because his violence was too trifling, considering his rights as a husband, and it was accidental.' The other assessor merely suggested that 'some one else (than the husband) may have done it.' The man was sentenced to two months' rigorous imprisonment, which was afterwards enhanced to two years by the High Court.

"I might multiply cases of this kind, which show not only that Hari Maiti's case is not exceptional, but that the present law, though not absolutely a dead letter, does not go far enough to efficiently protect this helpless class of children. No one can say that a few months' imprisonment is a sufficient penalty for crimes of this description, or that the marital relation ought to be allowed to be pleaded in extenuation or justification of such outrages on humanity.

"There is, moreover, much reason to fear that comparatively few cases of this class find their way into the Criminal Courts, and not many, perhaps, into the hospitals. But I would invite the attention of the Council to the terrible list, sent up by Mrs. Mansell and other lady doctors, of cases which had come under their personal observation of little girls, aged from nine to twelve, who had died, become paralysed or crippled, or been otherwise severely injured, as the result of premature cohabitation.

"Against such positive testimony I attach little importance to the negative statement of a number of native doctors practising in Calcutta that not a single case of bodily injury to a married girl has come to their knowledge in the course of their practice.

"And what of those cases in which neither death, nor grievous hurt, nor other physical injury cognizable under the Penal Code, is caused? What of the cases in which motherhood is attained, and which are relied on by the opponents of the Bill in justification of their demand that things shall be allowed to remain as they are? In a paper read by Dr. Bolye Chunder Sen before the Calcutta Medical Society, it is stated, on the authority of Dr. Doyal Chunder Shome, Teacher of Midwifery at the Campbell Medical School, that of 21 cases of

labour of girls between the ages of eleven and thirteen—ten of which were under his immediate care, while he had the general supervision of the other eleven—natural delivery took place in five cases, tedious delivery in five cases, instrumental interference in five cases, and still-born children were born in six cases. 'Most of the child-mothers,' he adds, 'kept tolerably good health after their first confinement; two of them only suffered from fever, and continued weak and anæmic; but many of the others fell victims to various diseases after the second or third confinement. I saw five of them dying of pernicious anæmia after prolonged suffering from fever and diarrhœa, and two died of phthisis. .....The children born alive did not look small or undeveloped when born, but their subsequent growth was not satisfactory; one died of infantile tetanus, two of marasmus within two months of birth, two of diarrhœa within five months, and three during dentition of fever and convulsions; the remaining seven grew up to be weak and delicate children.'

"Upon these facts I think I am justified in asserting that the necessity for further protective legislation is established. I cannot pray in aid what would be the most convincing testimony on the question, but I would emphatically endorse the opinion of Raja Doorga Churn Law, lately a valued member of this Council, who says:—'If child-wives could be examined as to the result of their first early meetings, there can be no question their evidence would be conclusive enough to justify the Government in stepping in and carrying out this reform.' What the women of India think on the subject may be gathered from the petitions addressed to Your Excellency by Native ladies of Ahmedabad, Calcutta, Bombay, Lahore, Poona, Mymensing and other places, which have been laid before the Council, and in which they say 'our sex is solely dependent on the Government for the protection of our personal rights, the necessity for which has been made more urgent by the opposition with which the Bill has met.' These ladies are for the most part members of orthodox Hindu families, and the sincerity and force of their appeal can no more be questioned than it can be disregarded.

"I pass on now to consider an argument of some importance originally urged by my hon'ble friend, but which he does not now seem disposed to insist on. He disapproved of the Bill as being 'a departure from the non-interference policy hitherto observed by the Government and guaranteed by the great Proclamation of 1858, which says—"We do strictly charge and enjoin all those who may be in authority under Us that they abstain from all inter-

ference with the religious belief or worship of any of our subjects on pain of Our highest displeasure."' Now, this is too serious an indictment to be left unnoticed, even if my hon'ble friend has, upon maturer consideration, thought fit to abandon it. There is absolutely no justification for the contention of my hon'ble friend; and it is intolerable that Her Majesty's gracious words should be perverted, as they have been on many platforms and in many newspapers, in order to support a charge of breach of duty by the Government of India. If my hon'ble friend had had the candour to read all those parts of the Proclamation which bear upon his argument, he would have found that while Her Majesty declared it to be Her 'royal will and pleasure that none be in anywise favoured, none molested or disqualified by reason of their religious faith or observance, but that all shall alike enjoy the equal and impartial protection of the law,' She was content to direct 'that generally in framing and administering the law, due regard be paid to the ancient rights, usages and customs of India.' There is here no such undertaking of absolute non-interference as my hon'ble friend suggests; and, if there were any room for doubt on the subject, Parliament has given a fatal blow to the construction which he would adopt, by enacting, in section 19 of the Indian Councils Act, that, with the previous sanction of the Governor General, measures affecting 'the religion or religious rites and usages of any class of Her Majesty's subjects in India' may be introduced, not only into this Council, but into the Provincial Councils wherever they may be established.

"But, it may be asked, what is a 'due regard' to ancient religious rites and usages? My Lord, this question was answered sixty years ago, in relation to the practice of sati. There was then no Queen's proclamation it is true, but the Queen's proclamation merely reiterated and re-affirmed the principle which in this respect had been recognized and established by the Government of India long before its transfer to the Crown. The prohibition of sati was denounced on almost the identical grounds on which this Bill has been attacked. After the Regulation had been passed an appeal was presented to the King in Council against it. It was said to be 'an interference with the most ancient and sacred rites and usages of the Hindus, and in direct violation of the conscientious belief of an entire nation'; it was urged 'that the abuses (if any) which may have arisen or occurred in the practice of sati can be effectually prevented by a proper attention to the opinions of the Hindus, and an equitable administration of the existing laws, without requiring a total interdiction of the practice'; and it was alleged that the Regulation 'is an unjust, impolitic and direct infringement of the sacred

pledge to keep inviolate the religion, laws and usages of the Hindus, manifested throughout the whole general tenour of the Acts of the Legislature of Great Britain, and the regulations and conduct of the Government of the East India Company.' The answer of the Court of Directors to these charges is the answer which I now make to my hon'ble friend's indictment, and it is this, that 'the power of making laws is vested in the Governor General in Council, which power is recognized and confirmed by the British Legislature; that in exercising this power the Government of India has at all times manifested a just attention to the religious opinions and customs of the Natives, so far as is compatible with the paramount claims of humanity and justice; and that a discriminating regard for those religious opinions is not incompatible with the suppression of practices repugnant to the first principles of civil society, and to the dictates of natural reason.' Upon these general grounds, and because the particular practice was a cruel one and was prohibited not as a religious act but as a flagrant offence against society, because it was questionable whether the rite was sanctioned by the religious institutes of the Hindus, and because it was regarded as absolutely sinful by many of the most learned Hindus, reasons which apply with remarkable relevance to the measure now under consideration, the Privy Council, to which the matter was referred, upheld the action of the Government and dismissed the petition.

"So far, therefore, as the sanction of religion or religious usage is claimed for the practice which this Bill seeks to prohibit, it seems to me that the argument may be disregarded if the Council is of opinion that the practice is one which on grounds of humanity and morality ought to be prohibited. I am disposed to agree with my hon'ble friend that no legislative body (whether constituted as at present or in any other way) can satisfactorily deal with the question of the Shastras, in the way of giving an authoritative opinion on them. But no member of this Council who has waded, as I have done, through the mass of dissertations on the subject which this controversy has called forth, can have failed to come to the conclusion that the construction put upon the Shastras by the Bengal Pundits has not been accepted in other parts of India, and that the balance of argument and authority is in favour of the supporters of the Bill. Even if it were not so, were I a Hindu, I would prefer to be wrong with Professor Bhandarkar, Mr. Justice Telang and Dewan Bahadur Raghunath Rao than to be right with Pundit Sasadhur Turkachuramani and Mr. Tilak; and I should agree with His Highness the Maharaja of Jeypore in thinking that, had the ancient sages whose authority is invoked by the so-called orthodox party lived

now, 'they would have taken upon themselves the responsibility' (as His Highness himself has done) 'of legislating with the view of protecting society from the pernicious consequences of early marriage and of the consummation of marriage before the child-wife has scarcely any idea of what marriage means.' It seems to me, moreover, unwarrantable to claim for Bengal an orthodoxy, and for its Shastris an authority, superior to that of the rest of India. It can hardly be contended that a doctrine which is non-essential elsewhere becomes essential because it is held in Bengal. No Legislature can undertake to discriminate between these variations of creed; but it derives support, in interfering with practices inconsistent with the public good, from the fact that those practices, so far as they are sought to be justified on religious grounds, rest on the authority of a comparatively modern scholiast, and are not countenanced by the teachings of the early law-givers who are the generally accepted expositors of Hindu theology.

"So much as regards the religious objection in the abstract. With reference to the particular rite of *garbhadhan*, with which it is said that the Bill will interfere, it is abundantly clear from the papers before the Council that it is not universally observed in Bengal, or generally in other parts of India; that its neglect by Kulin Brahmins as a class, and its non-observance by many families who disapprove of it on account of its obscenity, has not been followed by exclusion from caste, or other ecclesiastical or social penalties; that its observance may be postponed on various secular grounds; and that the penance for its non-observance is of an exceedingly trifling character. I have not failed to remark that two learned Judges of the High Court of Calcutta, for both of whom I have a great respect, have pointed out that 'the formal and outward penance may be simple, but the real efficacy of penance consists, according to the Hindu scriptures, quite as much as according to reason and common sense, in real inward penitence and a resolution not to commit the sin again.' I can quite understand that there may be men who place religious duty above all earthly laws, but these men are few; and I think Pundit Iswara Chandra Vidyasagar is nearer the truth when he says 'the punishment which the Shastras prescribe for violation of the rule is of a spiritual character and is liable to be disregarded.' Besides, when the neglect of this particular religious observance can be excused by the simple expedient of absence from home, it is difficult to see how any serious conflict of duty can arise in the minds even of the most orthodox.

"I pass now to the only ground upon which my hon'ble friend appears now to base his opposition to the Bill, and that is, its inutility. I may observe at the

outset that the utility of a measure of this kind depends to a very great extent on the support given to it by the more influential members of the community. If those respectable persons who object to the Bill because it is (they say) a measure of social reform, and all social reforms should emanate from the people themselves without legislative interference, would but consider how helpful an Act of this kind will be to them if they are really sincere in desiring an improvement in their marriage customs, they would welcome instead of opposing it, and would be as eager to point out to their countrymen the benefits likely to accrue from its observance as they are now zealous in suggesting the means by which it may be turned into an engine of oppression. I have no sympathy with the pseudo-social reformers who talk glibly on the subject, and do nothing. If they honestly believe their marriage customs are bad, let them follow the example of the Sardars of Rajputana, and amend them. If the Legislature is to wait for their action before undertaking a measure of protection of this kind, the necessity for which I think I have amply proved, the fate of child-wives in Bengal will never be ameliorated. My hon'ble friend says the Act will be a dead-letter; it is for him and those who support him to make it so, not by throwing difficulties in the way of prosecutions, but by lending their whole influence so to modify caste rules and domestic practices that prosecutions may become unnecessary. No one will be hurt by this Act who does not break it; no one, as I have shown, is compelled to break it by religious duty; for those who do break it, who shall say that the punishment likely to be awarded is too severe?

"My hon'ble friend has pointed out a way in which Hindu society can very materially assist the observance of the law. He says, speaking of Bengal,—

'Amongst people of the higher castes girls are generally married between the ages of nine and eleven. Amongst people of the lower castes marriageable age is still lower. The girls go immediately after marriage to their husbands' house and stay there for a week or so. Before they attain puberty they occasionally visit their husbands' house and make a stay for temporary periods. Whenever they visit their husbands' house, the general practice in Bengal is to allow the young couple to sleep together at night.'

'As my hon'ble friend justly observes, 'this practice is certainly pernicious,' and he considers it a 'moral evil which would not in any appreciable degree be remedied by this Bill.' But surely advantage might be taken of the passing of this Bill to restore the practice which formerly prevailed in Bengal, and which still prevails in the neighbouring provinces of Behar and Orissa, under which

a girl is not sent to her husband's house, until she is mature enough for cohabitation.

"It remains for me to deal with certain specific proposals which have been made for the amendment of the Bill, and I may say at starting that the Select Committee were, not merely ready, but anxious, to consider favourably any amendments which, while not weakening the principle of the Bill, might tend to remove public apprehensions as to the possibly injurious administration of the law. The first of these proposed amendments was to substitute the attainment of puberty for the age-limit of twelve years, and it was argued, plausibly enough, that it would be easier to give proof of the former than of the latter criterion, while at the same time the protection of the law would be extended to a larger class. The majority of the Select Committee were unable to accept these arguments. No doubt there will be difficulty in many cases in procuring satisfactory evidence of age, but the temptation to manufacture evidence in regard to the physical condition of the girl will be infinitely greater. As His Highness the Maharaja of Jeypore has aptly pointed out—'though such a provision would serve to silence the clamour raised against the Bill, yet there would be this danger, that delinquents in their endeavours to defend themselves would, almost in every instance, try to take shelter under the exception contemplated.' The majority of the Select Committee entirely agree with His Honour the Lieutenant-Governor in thinking that, apart from technical difficulties, 'the objections to making it necessary to prove in Court the occurrence of the first indications of puberty are insuperable.' We have the authority of the Bengal Government for holding that the signs of puberty are frequently brought on by artificial stimulation. In a letter to the *Indian Mirror*, Surgeon-Major Basu, the Civil Surgeon of Mymensingh, states that 'unaided menstruation is unfortunately a rare event in Bengal.' How then is it possible to accept this test in preference to that of age?

"No doubt the adoption of the age-limit of twelve years will not cover all the cases which it would be desirable to protect, but it will go a long way in that direction. If the statistics quoted by my hon'ble friend from Surgeon-Major Gupta's report are correct, it will cover 39 per cent. of the girls of India, and that is a great step in advance. Other authorities, however, Dr. Juggobundo Bose for example, justify the belief that the proportion will be much higher. In the absence of reliable statistics, we are constrained to fall back on what seems likely to be a generally acceptable limit. In many parts of India and among

many classes, the practice is established, or is gaining ground, of not sending wives to live with their husbands until they are at least twelve years old, and thus, as the Chief Commissioner of the Central Provinces observes, 'the theory of the law will, by the proposed amendment, be brought into harmony with the practice of the people on a point in which the morality of the people is in advance of the morality of the law.' Moreover, we assimilate the law regarding rape to the general law which provides that consent to the commission of an offence shall be unavailing if given by a person who is under twelve years of age.

"Another proposal has been made that no prosecution shall be allowed except at the instance of the child-wife herself, or her natural guardian, or some blood relation. The adoption of this suggestion would undoubtedly reduce the law to a dead-letter, for it is to be feared that all the influence of the family would be used to screen the offender rather than to protect the victim.

"Then it is said that the offence, when committed by a husband against his wife, ought not to be classed as rape, and should be visited with a lighter punishment. I do not think it desirable that the gravity of the offence should be minimized in this way. I agree with Sir Meredyth Plowden that 'it is an offence affecting the wife not as wife, but as a human creature'; and I should greatly regret if this Council were to weaken the effect of the Bill by drawing a distinction in favour of brutality on the part of husbands. With regard to the amount of punishment to be inflicted, that is a matter for the consideration of the Courts, which will apportion it, within the limits laid down in the Bill, according to the circumstances of the case; and while, in some instances, a light penalty may be inflicted, it can scarcely be doubted that cases will occur in which the highest penalty awardable will not be disproportionate to the seriousness of the offence committed.

"Although I cannot help thinking that the chances of this measure being misused if it becomes law have been greatly exaggerated, I have no hesitation in commending to the acceptance of the Council the two additional safeguards against its possible misapplication which have been introduced by the Select Committee. The first, which limits the preliminary jurisdiction in such cases to District Magistrates and Chief Presidency Magistrates, has been adopted at the suggestion of the Lieutenant-Governor of the North-Western Provinces; the second, which limits police investigation, if ordered under section 155 of the Criminal Procedure Code, to investigation by police-officers of superior rank

only, has the approval of the High Court at Calcutta. We have thus, I think, fenced round the administration of the Act with every reasonable precaution that could be adopted without entirely destroying its efficiency. As regards the publicity to be given to proceedings under it, the Magistrate has an absolute discretion, under section 352 of the Criminal Procedure Code, to exclude the public from his Court, if he thinks fit. In this and in all other matters the experienced officers to whom alone the investigation of cases between husband and wife will be entrusted may be relied upon to act with all the circumspection which the exercise of so delicate a jurisdiction may demand.

"One other point remains to be noticed. It has been said that, if the Bill is passed, women may be subjected against their will to medical examinations and thereby put to shame and disgrace. There is no ground for this apprehension. It has been laid down by the High Court at Calcutta, in the clearest terms, in the case of *The Queen-Empress* v. *Guru Charan Dusadh*, that no Court or Magistrate has any right to order the medical examination of a witness without her consent, and that such an examination is an illegal and unjustifiable assault, for which damages may be recovered. This objection, therefore, fails like the rest.

"I have now, I think, gone through the main arguments for and against the Bill, and the result seems to be this. It is admitted that immature prostitution and premenstrual cohabitation, where they exist, are abhorrent alike to common humanity and the teachings of the Hindu religion, and ought to be put down by law; the Indian community at large, for all classes of whom we are legislating, approve of the measure, so far as it goes, though many would desire to carry it still further—and this is the only part of the criticism with which I have any sympathy; but because the operation of the law might in a few cases interfere with the performance of a rite which is at best of questionable obligation, and of merely partial and local observance, my hon'ble friend would deprive the Bill of its most powerful sanctions, and establish a ready means for the evasion of its penalties. I trust the Council, in the interests of the great class of Her Majesty's subjects who are the victims, not so much of an unreasoning regard for what may be believed to be religious duty, as of a callous disregard of any consideration but selfish passion, will set aside this plea on behalf of a practically infinitesimal minority of hyper-orthodox persons and pass the Bill in the form in which it has been reported by the Select Committee."

The Hon'ble THE RAJA OF BHINGA said:—

"My Lord, I wish to say a few words in support of this Bill. As far as the North-Western Provinces and Oudh are concerned, the Hindus are not particular at all about the performance of the Garbhadhan ceremony, nor is any objection raised by their caste people if they choose to marry their daughters after their attainment of the age of puberty. Our Shastras do not allow the Sudras to perform rites like *Garbhadhan* prescribed in the Sutras, and the Brahmins who assist them in the performance of such rites are called 'Sudrayachi' or 'beggars supported by the Sudras,' and the Shastras strictly enjoin that they should be punished with excommunication. These rites are intended only for the twice-born, namely, the Brahmins, Kshatriyas and Vaisyas. They, having to undergo before marriage the ceremony of Upanayana or the investiture with the sacred thread, do not think the observance of *Garbhadhan* so essential. Hence, perhaps, arises the laxity in the practice.

"Persons of high family, as a rule, seldom marry their daughters below the age of fourteen. Search for suitable husbands and the demand of large dowries stand in the way of early marriages. It has, therefore, become customary among the Kshatriyas or Rajputs that as soon as a girl is married she leaves her father's house for that of her husband; and that is one of the chief reasons, I believe, which actuated the Princes and Nobles of Rajputana to pass at a meeting a resolution to the effect that they should not marry their daughters below the age of fourteen and their sons below that of eighteen.

"In my part of the country, girls rarely, if ever, attain the age of puberty before the completion of their twelfth year. But, when menstruation takes place earlier, it is generally brought on by objectionable means.

"That there is a demand for sexual intercourse with children, and that consequently it is thought necessary to have recourse to an abominable and unnatural process in order to bring about the desired result, cannot be denied. Prostitutes ask for, and men willingly pay, very high prices for cohabitation with girls of immature age. Such cohabitation is known up-country by a particular name which, however, escapes my memory. The prostitutes on such occasions are presented not only with large sums of money, but with jewels, dress and other valuable articles as well. When men undergo trouble and expense to such an extent to satisfy their lust, how can one expect that they will restrain their desires when the above qualifications are found in girls lawfully married to

them? That such an unnatural desire exists in men of this country is to be attributed greatly to the present state of society and to the influence of the works of the Hindu and Muhammadan poets of the degenerate period. Such works are, no doubt, the outcome of the past misrule and anarchy, when unbridled sensuality was the order of the day. In Hindi alone there are at least one hundred treatises on illicit love, called Nayakabhed, and all of them abound in the loathsome descriptions of the pleasures of cohabitation with girls of tender years. Such being the case, the sooner a stop is put to these gross outrages on humanity the better for the country. In the words of Vedavvyas, 'Paropkar,' or doing good to others, is the fundamental principle of our religion: and the ancient bard Valmiki, in his Ramayana, makes one of our greatest sages, Vicwa Mitra, go so far as to lay it down that a ruler may perform acts in contravention of the express forms of religion when the protection of his subjects and the interests of humanity render the same necessary.

"At the same time I submit some safeguards are very necessary. Parda system being strictly observed in the Provinces of Oudh and North-West, a Hindu or Muhammadan lady of family cannot even converse with an outsider. Therefore appearance before the Magistrate, exposure by the pleaders, and the examination by the male doctors will be viewed with horror and lead to deplorable consequences."

The Hon'ble Mr. NUGENT said :—

"My Lord, I do not propose to give a silent vote on this very important measure, which has attracted so much attention not only in India but also in England, has elicited so many opinions of such varying and conflicting descriptions, and has, apparently, since its introduction in January by the Hon'ble Sir Andrew Scoble, constituted the chief topic of discussion and interest in the Native community throughout the country. Like the other members of your Excellency's Council, I have waded through the filthy floods of loathsome literature which have been so copiously poured forth, and can say with truth that never before have I had equally unpleasant and repulsive reading. It is difficult for a layman to arrive at a positive conclusion on a question of tangled Sanskrit texts, concerning the proper interpretation to be placed on which the most learned modern experts and eminent scholars are at hopeless variance. Nor is it easy to apportion the weight to be attached to the utterances of old-world sages and mediæval doctors of medicine or divinity when those authorities differ, the more especially where doubt exists as to the purport of those utter-

ances, and diversity of view prevails both as to the text and the commentary, their meaning and their value. The main point at issue between the Native opponents and supporters of the Bill would seem to be whether, according to the ancient Hindu religious law and its later commentators, the Indian scholiasts of centuries back, the consummation of marriage immediately after the first appearance of menses in his wife is prescribed as a binding religious duty on the husband—a duty of which the non-performance involves the commission of a deadly sin. On this subject much has been said and written, and the realistic details entered into by some of the keenest and most erudite adversaries of the measure, specially as regards the rites attendant on what is described as a religious ceremony and the nature of the penance to be undergone by the ancestors of a husband who complies not with the alleged injunctions of the Hindu scriptures, can only be characterised as revolting. But, as far as I am competent to judge, the balance of argument and of fact is distinctly on the side of such eminent interpreters of the Sanskrit text and authorities on the ancient books as the Hon'ble Mr. Justice Telang, Dr. Bhandarkar and others who hold their views; and the opinion, therefore, at which I have arrived is that it is not essential, according to his religion, that a Hindu husband should actually cohabit with his wife immediately after her first menstruation, whatever might then be her age, and whatever her physical fitness for sexual intercourse, and its results in the form of maternity. That pre-menstrual cohabitation is strictly forbidden seems certain: that intercourse by a husband with his wife immediately after the first appearance of the menses—which after all is but one of the earliest signs of approaching puberty—is enjoined as a duty or even is contemplated as a general rule, is not, I think, established. Indeed, it would be surprising if it were. The old Hindu lawgivers, like other legislators for nations in the earliest times, were wise men. In the injunctions they promulgated or codified they had ordinarily in view some substantial, tangible object more intimately connected with this world than with the world to come, though to render those injunctions the more binding and respected they imparted to them a religious sanction. In their commands concerning marriage the result at which they aimed was the growth of a large, strong and healthy population, able to establish towns, sufficient to develop the agricultural resources of the country, and well fitted, should the occasion arise, to speak with their enemies in the gate; and this object they, being men of great wisdom and intelligence, knew they would be unlikely to attain by requiring boy-husbands to cohabit with immature child-wives—a union from which only could spring a progeny weak in body and feeble in mind. To the relatively modern glosses made by comparatively

recent commentators of merely provincial influence and reputation on the texts of the early lawgivers no serious importance need, in my humble opinion, be attached. These commentators at least were not inspired: their writings are not sacred scriptures. It is, I think, in any case a question whether, if it could legitimately be held as absolutely certain that the ancient Hindu religious or social law did direct husbands to cohabit with immature child-wives, Government would not be morally bound to intervene now to prevent a sin against humanity and to put an end to an abominable practice worthy only of debased savages, which the evidence forthcoming shows to be unfortunately only too common in some parts of India, particularly in portions of Bengal. The British Government has not hitherto hesitated to prohibit acts in themselves wrongful and cruel even when the plea of religious sanction could be advanced on their behalf with greater validity than it can be in this instance; and it would not now, I think and trust, shrink from putting its veto on other customs equally opposed to the instincts of all right-minded men whatever their race and whatever their creed, and even more harmful in their present and their future results, merely because noisy agitators protested that to stop such abominations would be to outrage their religion and to run counter to dubious dogmas propounded in prehistoric ages. But, as already observed, this question does not, I think, arise here. The Bill now under consideration does not as far as I am able to judge interfere with the Hindu or Muhammadan marriage law, and the theory that the teachings of the Hindu scriptures require the immediate consummation of marriage on the very first appearance of the menses is not established by the evidence. To the notice of those opponents of the measure who contend that the intervention of Government in such a matter is inadmissible may be commended the action of His Highness the Maharaja of Jeypore, a Rajput of high caste and pure descent, the enlightened ruler of one of the chief Indian principalities, who by a stroke of his pen has prohibited the marriage within his territories of Rajput girls before they have attained the age of fourteen years.

"It is not necessary to dwell upon the misery, the unhappiness, the pain and the other evils which result from the pernicious practice which this Bill is designed to prevent. They are known to all. But it is contended that the proposed legislation is uncalled for, because the great majority of girls do not attain to puberty until they have passed the age of twelve and pre-menstrual intercourse is forbidden by the Hindu scriptures, because the number of cases of violation of immature girl-wives under that age by their husbands is exceedingly small, and because the existing law suffices to meet all requirements.

To this the answer, I think, is that, though in other Indian provinces pre-menstrual cohabitation may be of very rare occurrence, in Bengal it is far from unfrequent; that a considerable number of Indian girls do commence to menstruate before they reach twelve years although still imperfectly developed and physically unfit to live with their husbands, and that for them protection is needed; that the number of instances in which serious and sometimes fatal injury is caused to a luckless child by enforced intercourse with her husband is unfortunately much larger than is stated by the opponents of the measure; and that the occurrence of these cases is in itself sufficient proof that the law as it now stands is not adequate or sufficiently deterrent. Much stress is laid on the statements of a number of medical men, mainly Native, but some European, that in the course of their practice they have not met with cases in which girls have been injured by connection with their husbands. To this evidence I attach little value. This is precisely the class of cases in which no medical man would be called in to advise and prescribe. The maimed wife, if treated at all, would be treated by the women of the household and their female neighbours: the matter would be hushed up and kept secret: and, if death did follow in instances where the girl was very small and the violence employed unusually great, the cause assigned would be fever, cholera or an accidental fall. A very different tale is told by the lady doctors in India in their memorial.

"That a Bill on so delicate a subject as that dealt with in this measure should lead to much agitation and excite considerable opposition is inevitable, and it cannot be denied that the proposed legislation has in many quarters met with a hostile reception. It is satisfactory, however, to find that a large and influential volume of public opinion, notably in the Bombay Presidency, is in favour of the measure, and that of those persons really competent to judge the question on its merits a majority would appear to support the course pursued by Government. It may, I think, safely be assumed that at most, if not all, of what are described as 'monster meetings' held to protest against the Bill, nine out of ten of those present had but the most vague and nebulous notions concerning either the provisions of the Bill or the effects it was likely to produce. They most probably were told with certain rhetorical embellishments not characterised by very strict regard for accuracy that Government was about to pass a law which would invade the sanctity of their homes and private life; and forthwith, without further thought or discussion, they were prepared to vote as was desired or to sign any paper placed before them. When once, however, the Bill has become law, all agitation will, I anticipate, speedily subside; the baseless clamour regarding

religion being endangered will rapidly die out; the beneficial and salutary character of the enactment, hedged round with safeguards as it now is, will be recognised; and gradually a practice which no right-minded man can defend and every kindly-hearted woman must abhor will become as extinct as is sati or any other barbarous custom which has already been swept away by the progress of education and civilisation.

"For these reasons, my Lord, I beg to support the Bill now before Your Excellency's Council."

The Hon'ble MR. EVANS said:—

"The importance of the principles involved in this Bill and the amount of interest which it has excited compel me not to give a silent vote, although I would gladly have been spared the discussion of so unsavoury a subject. I propose to consider the main principles upon which legislation of this character is based, and to review some of the points arising out of the discussion. First, with regard to the principles. I cannot do better as regards them than cite the words of Sir Barnes Peacock, then Legal Member of Council, in the debate on the Hindu Widows Re-marriage Bill. In that debate—I am reading from the Proceedings of the Council—Sir Barnes Peacock said that 'he was an advocate for liberty of conscience; and he thought that, so long as the interests of society were not injuriously affected, no political Government ought to throw in the way of its subjects any impediment whatever against their following the dictates of their own consciences, either directly by subjecting them to penalties, or indirectly by subjecting them to disabilities.' But then he went on to say that, 'where the commission of an act or the omission of a duty would be an offence against society, a political Government interfered to prevent that act or omission. But it did that for the protection of society and not for the protection of religion. Upon what principle, Sir Barnes Peacock asked, was it that the Indian Legislature had proceeded with reference to the practice of sati? Regulation XVII of 1829 declared that practice to be illegal and punishable by the Criminal Courts, and the preamble stated the reasons for the introduction of the measure. It said:—

"The practice of sati, or of burning or burying alive the widows of Hindus, is revolting to the feelings of human nature; it is nowhere enjoined by the religion of the Hindus as an imperative duty: on the contrary, a life of purity and retirement on the part of the widow is more especially and preferably inculcated, and, by a vast majority of

that people throughout India, the practice is not kept up nor observed : in some extensive districts it does not exist : in those in which it has been most frequent it is notorious that, in many instances, acts of atrocity have been perpetrated which have been shocking to the Hindus themselves, and in their eyes unlawful and wicked. The measures hitherto adopted to discourage and prevent such acts have failed of success, and the Governor General in Council is deeply impressed with the conviction that the abuses in question cannot be effectually put an end to without abolishing the practice altogether. Actuated by these considerations, the Governor General in Council, without intending to depart from one of the first and most important principles of the system of British government in India, that all classes of the people be secure in the observance of their religious usages, so long as that system can be adhered to without violation of the paramount dictates of justice and humanity, has deemed it right,"' &c.

"And then Sir Barnes Peacock went on to say :—

'Then followed rules abolishing and making illegal the rite of sati. That rite was an injury to society. It was an injury to society that a widow should burn or bury herself with the body of her husband, or that any one should assist her in doing so; and therefore the Legislature had interfered and made the practice illegal. If a person'—and these are most important words—'believed it to be his imperative duty to do an act which would not be an injury to his fellow men or to society at large, the Legislature would not forbid him to do it; but, if he believed it to be his imperative duty to offer human sacrifice, the legislature would interpose and say—"We will not allow you to carry out your belief to the injury of your neighbour."'

"These were the principles upon which Sir Barnes Peacock in 1856 laid down the limits which should be observed by the Indian Government in penal legislation; they were the principles which, I understand, had been adopted in the Sati Regulation and which were confirmed by the rejection of the petition against the Regulation before the Privy Council,—and these I take it are the principles underlying the Queen's Proclamation and the Indian Councils Act. I entirely agree with the hon'ble member that it is impossible to read the Queen's Proclamation as an abandonment of the right of Government to protect its subjects from injuries inflicted in the name of religion or to repress acts injurious to society. That Proclamation, as I read it, is, so far as it touches this matter, nothing more than a declaration by Her Most Gracious Majesty that she wishes to have tolerance of all religions strictly observed, and that due attention should be paid to ancient usages and customs where legislation becomes necessary; but to contend that Her Majesty would, if she had the power to do it, deprive the Government of the country of the means of putting down

crime, even if that crime were committed in the name of religion, is almost inconceivable, and I need say nothing more about it.

"These then are the clear principles, these are the powers, which the Government possesses and upon which it has always acted, and it cannot be denied that not only has the Government a right to give protection to all its subjects where protection is needed, but that it is its duty to do so; and that duty is never more paramount, never more clear, than when the protection is necessary on behalf of minors and infants; and I take it that, if there is a class which more than any other appeals to the manly instincts of every one worthy of the name of man, it is that of the helpless infant compelled to underge sexual intercourse while she is is an entirely immature condition.

" This is undoubtedly so, but so loath has the Government of India always been, and rightly so, to touch even the hem of the garment of any of the religions of India, and, so to say, lay a sacriligious hand upon them—so loath to do anything which could even be misinterpreted as an attempt to disturb religious feelings or customs,—even customs which are not religious in themselves but are accounted so,—that I who have lived many years in this country, and have some knowledge of the feelings of the inhabitants, should have felt much hesitation in supporting any proposals for legislation which might have been open to that imputation, or which might be made use of in order to inflame or disturb the minds of the ignorant or superstitious, unless a very clear case was made out that it would be a manifest dereliction of duty on the part of the Government not to interfere. But, looking at the mass of evidence before us, it does seem impossible to deny that a state of things exists which imperatively calls for legislation.

" Sexual intercourse with immature female children is so utterly revolting, so contrary to the first principles of civilized society, and such a physical outrage upon the poor little children themselves, that I should have thought that it was beyond the pale of discussion to consider whether it should be treated as a vice like drunkenness, or, as what it is, a heinous crime against these poor little infants.

" It has been clearly established that this crime, this odious practice, prevails, and prevails very largely. The terms in which the Raja of Bhinga has just referred to it show what the real nature of it is, and also the abhorrence with which all right-minded people must view it.

"Then, what are the consequences of it? Not only is there the physical outrage itself, but it is clearly shown that in a very large number of cases serious hurt, and sometimes even death, are the result to the victims; in other cases injury to their constitution of a lasting and grave character. So far then it would seem clear beyond all doubt that some legislation is necessary.

"The present age fixed by the Penal Code at which absolute protection is given to all girls against sexual intercourse is ten, although the ordinary age of consent to any act which causes hurt or injury and which would otherwise be criminal is twelve. A review of the medical evidence shows quite clearly that females are not fit to undergo the strain of maternity until a considerably later age than twelve; but the Government, in its tenderness for the feelings and customs of the people, and having regard to the peculiar difficulties of the matter, have resolved to take twelve as the age, which must be conceded to be, as it were, an irreducible minimum; because, irrespective of the question which I shall come to presently, it seems impossible to deny that, apart from peculiar religious objections arising from Hindu marriage customs, twelve would be considered to be, if anything, too low an age. So far then there would appear to be no objection to this legislation. But the difficulty arises out of the usages of the Hindus. One of their great usages is that of infant marriage, and under that usage the great bulk of girls are married, some of them even as early as five or six, and the majority of them in this Province between eight and eleven. Now, there is a very great difference between Hindu marriage and English marriage, and there has been great misconception arising out of want of attention to this difference.

"An English marriage or a European marriage takes place between adults. From the nature of the case they are regarded as already fit for sexual intercourse, and the marriage implies consent to immediate cohabitation, and the phrase 'consummation' indicates the immediate completion of the marriage. With the Hindus, however, the case is quite different. Marriage among the Hindus—infant marriage though it be—is in the nature of a sacrament, and it indissolubly creates the status of wifehood, but without any relation between husband and wife which renders immediate cohabitation necessarily permissible; for it is of course apparent that by the laws of nature and also by the laws of the Hindu religion such immediate cohabitation is impossible and would be criminal when attempted with an infant wife of ~~(say) twelve years~~. So the position stood thus. In the English law it was laid down that the husband could not

commit rape upon his wife, because it was part of the contract of marriage that the wife should give her consent to immediate cohabitation, which consent she could not retract. But no one has ventured to suggest that the poor little Hindu infant of five or eight or nine does, either of herself, or through her guardians, give any such consent whatever; on the contrary, the precepts of the Hindu Shastras are clear that it is a crime of the most revolting character for the husband to attempt to have intercourse with his infant wife before she has attained maturity. This is the reason why in our Penal Code there is positive protection afforded even to married girls up to the age of ten, and this also is the reason why this provision was deliberately introduced notwithstanding that Lord Macaulay, who was an English lawyer, had not provided any protection for the wife from sexual intercourse, it being according to English views unnecessary because the marriage involved immediate sexual intercourse. That I take it is the real meaning of it, and this consideration shows that the Committee who revised the Bill, and at the head of whom was Sir Barnes Peacock, had thoroughly considered this matter, and concluded that the conditions were so different here that, wife or no wife, we were bound by the dictates of humanity, as well as of religion, to protect the female infant.

"The question then simply came to this, what should be the age? The age of ten has been fixed by the Penal Code, and has been the age now for the last thirty years. The evidence before us shows this to be far too low an age, and the cases cited prove that there is very great necessity for raising the age, at any rate as high as twelve. The objections with regard to the use of the word 'rape' based upon English law all fall to the ground.

"The next difficulty that is raised is the religious one. It is said by a large number of Hindus in Bengal that they are bound by their religion to have sexual intercourse with their infant wives on the first appearance of the menses. This opinion is not shared by a very large number of the Hindus in other parts of India; it is not even universally prevalent in Bengal; and the question is one which has been hotly debated. I do not propose to go into the merits of that debate. I am quite willing myself to concede that, however wrong a man's views may be of his own scriptures, if he believes any doctrine, however absurd, we must accept it as his religion until he chooses to abandon it. But it is perfectly clear that if this religious doctrine were pushed to its logical extent it would give sanction to the most terrible crimes, because the medical testimony is clear that there are instances in which infants of a few months old menstruate,

and the menstruation goes on; there are other instances in which menstruation appears in very young girls who have no other signs of maturity, and then stops, and regular menstruation is not resumed until some time later. Under the present law intercourse with these children on the ground that they have menstruated is punishable with transportation, or ten years imprisonment, if the children are under ten, and the so-called religious sanction is set aside, that is, Hindus are prohibited now from doing that which they say they are imperatively bound to do. The question then is merely whether the prohibition shall be carried two years further. The only result of that is that a larger and more appreciable percentage of girls menstruate between the ages of ten and twelve, and so there would be a larger number of instances in which the persons who hold that particular form of religious belief will not be allowed to carry it out at the expense or to the injury of their child-wives. That is really the sum and substance of the matter.

"It has then been proposed by persons, who are at one with us in desiring to put down premenstrual cohabitation between husband and wife as repugnant to the Hindu Shastras, that we should adopt first menstruation as the limit instead of any limit of age. I should have been very glad if possible to meet the religious scruple, fanciful as it appears, by such a concession, but it is absolutely impracticable, and the reasons why it is impracticable are perfectly clear.

"There is no real means by which you can give the necessary protection to young girls of a higher age than ten except by raising the age of consent. The objection that age is not ascertainable with sufficient certainty for the purpose of a criminal trial is really of very little value. There is no doubt difficulty in many cases in ascertaining age, just as there is great difficulty in this country in ascertaining any other fact by oral evidence. But our law bristles with instances of limits of age. I put aside the well-known fixed age of majority, which it is necessary to have, and I will take a few instances out of the criminal law itself. Under section 82 of the Penal Code nothing is an offence which is done by a child under seven years of age. Then section 83 provides for cases where acts which would be offences are committed by a child above seven and under twelve. Section 317 deals with cases where a child under twelve years of age is abandoned by its parents, and it provides for them a punishment of seven years imprisonment.

"These are a few of the age limits existing in the Penal Code and which are constantly worked, and it does seem a strange thing to object to an age limit being

fixed in this Bill, and that it should be represented to us that it would be practically impossible to ascertain ages in this country and that it would be easier to ascertain whether the first appearance of the menses has taken place. Now, as regards that, I am aware that there are prevalent in various parts of the country certain festivities and ceremonies which take place on the occasion of the first appearance of menstruation. I am informed that these ceremonies, which are of a scandalous and indecent character, are gradually dying out, and that they are very far from being universally prevalent even amongst Hindus. Then I would point out that it is absolutely impossible, having regard to the medical testimony with reference to these little girls that some menstruate at an extremely early age, to legalise sexual intercourse with them on the ground that the menses have appeared. I would also point out, as has been done by the Hon'ble the Raja of Bhinga, that in many cases the menses are unnaturally stimulated, and that in other cases the flow is not what is supposed but is merely the result of a ruptured hymen, a result of the very crime which we are seeking to put down It is also quite apparent, as already stated, that first menstruation is in many cases merely one sign of approaching puberty, and does not indicate the period when sexual intercourse may properly take place. Moreover, the plea of first menstruation having taken place would be put forward in every case and supported by oral evidence. Medical examination of the victim would not be possible without her consent. So no reliable test of the truth of the plea would be available. The accused would be able to have all the ladies of the family examined as to indelicate details, and conviction would be very difficult and uncertain and the scandal would be great. Under these circumstances, it is impossible to adopt this proposal and there is no alternative but that Your Excellency should either abandon the attempt to give protection to these little girls or should disregard the religious argument. Now, it would be very easy for the Government of India to sit quiet, and to wait, as it has been recommended from many quarters that they should wait, until education and time have changed the character of the people.

"This was the very argument employed in the sati case, and which kept Lord Amherst during the five years of his Governor Generalship from meddling with the matter. I refer, my Lord, to Kaye's *History of the Administration of the East India Company*, and at page 531 it is stated that by the Bengal returns from 1819 it appeared that 560 cases of sati were reported, of which 421 were said to have occurred in the Calcutta Division alone. But notwithstanding that that was the case in 1819, notwithstanding that there was consi-

derable inquiry into the matter and that many of the Company's servants were of opinion that they ought to take up the matter and suppress this abomination, yet the conclusion, on reading the whole of the opinions, that Lord Amherst came to was this :—

'I am not prepared,' he wrote in March 1827, 'to recommend an enactment prohibiting sati altogether ..... I must frankly confess, though at the risk of being considered insensible to the enormity of the evil, that I am inclined to recommend to our trusting to the progress now making in the diffusion of knowledge among the natives for the gradual suppression of this detestable superstition. I cannot believe it possible that the burning or burying alive of widows will long survive the advancement which every year brings with it in useful and rational learning.' 'But,' says the histoiran, 'the period of Lord Amherst's tenure of office was fast drawing to a close. Before the year in which this minute was written had expired, his successor was occupying the Viceregal chair. The high moral courage of Lord William Bentinck faced the abomination without shrinking.'

"And we know what the result was : it was the Sati Regulation and the suppression of the practice of sati altogether. But history repeats itself, and the same arguments which were addressed to Lord Amherst are now addressed to Your Lordship.

"I should also remind the Council that at the beginning of this century human sacrifice, that is, the sacrifice of children, was one of the recognised religious practices in parts of Bengal itself. I turn again to Kaye's *History*, at page 548, where he quotes from *Ward on the Hindus*, and I find the following :—

'The people in some parts of India, particularly the inhabitants of Orissa and of the Eastern parts of Bengal, frequently offer their children to the goddess Gunga. The following reason is assigned for the practice. When a woman has been long married and has no children, it is common for the man, or his wife, or both of them, to make a vow to the goddess Gunga that, if she will bestow the blessing of children upon them, they will devote their first-born to her. If after this vow they have children, the eldest is nourished till a proper age, which may be three, four or nine years, according to circumstances, when, on a particular day appointed for bathing in a holy part of the river, they take the child with them and offer it to this goddess ; the child is encouraged to go further and further into the water till it is carried away by the stream, or is pushed off by its inhuman parents.'

"This also was a practice which the British Government had put down and did put down. These matters of history now, but it is well to remember

that it was in the name of religion that these sacrifices were made and that they were made by the inhabitants of this part of India.

"So much then for this portion of the subject, and I think I have shown that there has been no departure in this legislation from the fixed and guiding principles which have always actuated the Government of India, and that there is good and sufficient cause for this action, that it is necessary to take it, and that, desirous as Government may be of meeting religious objections, they are unable to accept the proposal to fix the first menstruation as the limit of protection.

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"There is only one more argument I propose to deal with, and that is as to the inutility of the Bill. It is said that, granting all this, the Bill will be a dead letter. There are two statements made. The first is that there will be no prosecutions under this Act except where there has been physical injury of a grave kind arising from the sexual intercourse: and the other statement is that where injury does arise from sexual intercourse the present law is amply sufficient to deal with it. As regards the first of these statements I must admit that there is a great deal of truth in it. I do not expect that there will be many prosecutions except where there has been severe injury, and the reason why I think so is this. These things take place in the privacy of the zenana, and so long as they are hushed up by a depraved public feeling, which certainly, judging from the controversy raging round us for some time, seems to prevail extensively in Bengal, I cannot expect that there will be many prosecutions; but I do not think that on that ground the Act will be without use. The very same difficulty met the British Government when they attempted to deal with infanticide in Rajputana. There the infanticide took place in the zenana. It was impossible to know what the child died of. A little pill of opium the size of a pea, or a small quantity of the drug rubbed on the nipple of the mother's breast, was sufficient to carry off the child. It took the British Government seventy years of incessant pressure before we could be said to have quite put down that abominable practice in Rajputana, and it may be that it will be a very long time before the people of Bengal who are addicted to this practice will change their ways. But none the less I venture to think that the fact of these acts being made crimes by the Penal Code and punished when detected with a heavy penalty will have a deterrent effect, and that in course of time the evil may yield in the same way as infanticide did in Rajputana. So much for that part of the question.

"As regards the other point—that the law is sufficient to deal with cases of injury which are unhappily too common and which do come before the Courts—I desire to emphatically dissent from it. The Penal Code provides in section 80 that nothing is an 'offence which is done by accident or misfortune, or without any criminal intention or knowledge in the doing of a lawful act in a lawful manner, by lawful means and with proper care and caution.' So long as sexual intercourse with these little immature girl-wives is allowed by us to be a lawful act and so long as it is done in a lawful manner, by lawful means, and with proper care and caution, unless it can be shown that there was some criminal intention or knowledge, the doer of the act is bound to get off scot free. The opponents point to the conviction of Hari Maiti. I saw the papers in the Hari Maiti case, and my opinion was the same as that of all other counsel who had seen them—that it was a case that ought to be prosecuted, but that the chances of conviction were very very small, and the reason is very apparent from the charge of Mr. Justice Wilson, from which a quotation was made to the Council by the hon'ble member in moving the Bill. It is quite true that the man was convicted, but it must be remembered that he was convicted notwithstanding many difficulties, and that the jury who convicted him had not got to give any reason. The fact was that they did happen to convict him. Then there is the Maldah case to which reference was made just now. The Brahmin pleader who was one of the assessors considered that the violence committed by the husband in putting his hand on the child-wifes throat for the purpose of overcoming her resistance was a trifling force employed in the exercise of his marital right to perform a lawful act, and that therefore, though death accidentally resulted, he was not punishable. In that case the evidence as to menstruation was so conflicting that no finding was come to upon it. The Magistrate gave him two months and the High Court two years, but, as far as the two assessors were concerned, he would have got off. I cannot therefore understand how it can be contended that the law which leaves these acts perfectly lawful and only punishes the result of them when there is found to have been rashness or negligence in the commission or knowledge of the consequence which happened to result—I cannot understand how this state of things can be considered satisfactory; and I think that if this Bill had no other effect than that of providing certain conviction and an adequately severe penalty for those cases of injury which do come to the notice of our Courts, when the child is under twelve, that would be a very great gain indeed; such a result could not be open to the charge of inutility though many girls over twelve will still have no protection from premenstrual intercourse.

"I do not desire to go into the other numerous questions raised in this discussion. I have desired mainly to point out that the Government of India has not in this legislation in the smallest degree departed from those principles which have guided it heretofore, and which will, I trust, always guide it; that religious toleration and respect for religion will always be observed where the religious doctrines do not compel criminal results; and I have been anxious as far as possible to allay the apprehension felt that the Government was starting on some new course by pointing out that there is not any ground for it. All the details of the Bill have been gone into so fully by the hon'ble member,—and other speakers will follow,—and the religious question will, I am sure, be so fully dealt with by my hon'ble friend Mr. Nulkar, that I will not trouble the Council longer, but merely say that I vote for the passing of the Bill."

The Hon'ble MR. BLISS said :—

"As a member of the Select Committee on this Bill, I have had before me very many more petitions and opinions than those which have been printed and circulated to hon'ble members generally. I have also received from different parts of the country—principally of course from Bengal—many pamphlets and newspaper articles bearing on the subject. I have considered all these to the best of my ability, and have arrived at the conclusion that the Bill should be passed in the form in which it is now before the Council. I understand that in some quarters there is a feeling of disappointment that in the Committee's Report the arguments for and against the Bill have not been set out and discussed at length. I have also heard that from the brevity of that Report it has been held that this important subject has received too scant consideration at the hands of the members of the Committee. My Lord, this feeling is based on an entire misapprehension. I can say, not only for myself, but for the other members of the Committee, that the whole subject received most careful and anxious consideration; and that, if the Report of the Committee is brief, it is not because we underrated the importance of the subject or desired to slight the opinions of those who are opposed to this Bill, but because we saw no reason to depart in this case from the custom of restricting the Reports of Select Committees within narrow limits, and preferred to set forth in this Chamber our reasons for the opinion at which we had arrived.

"The ground on which this Bill is chiefly opposed is that it will interfere with the performance at the proper time of the sacrament which bears the name

of *Garbhadhan.* Possibly, at some past time in the long history of Hinduism, this sacrament may have been regarded by pious Hindus as essential to salvation, and may have been universally—or at least commonly—performed. But it seems to me quite impossible to contend that this is now the case, or that any religious or social penalty follows on its omission. Its place appears to have been taken 'by certain disgraceful female rites, abhorrent alike to religion and decency,' to use the words of one of the Bengali gentlemen whose opinion on the Bill is before us. The same gentleman speaks of raising 'the whole superstructure of opposition on the importance of a ceremony practically obsolete.' I think he was right in using these words, and that the *Garbhadhan* sacrament or ceremony is practically obsolete. Indeed, there can be no doubt of this. There is no evidence at all that the ceremony is ever performed. It is true that many people say that it is, but the evidence is entirely secondary. So far as my knowledge goes, not one of the many—I may say thousands of persons—who have signed petitions or addressed the Council in other ways on this subject has ventured to mention a single case in which this ceremony has been performed to his own knowledge.

"Admitting, however, that the ceremony is still observed in a few specially orthodox families, let us consider how far it is right to conclude that its performance on the very first occasion of the indication of approaching puberty by the occurrence of a certain condition is imperatively necessary—necessary, I mean, to salvation. It is clear that, if its performance at that particular time is necessary to the salvation of any one Hindu living in Bengal, it must be necessary to the salvation of all other professors of the same faith, whether living in Bengal or elsewhere in India. But it is not denied that the *Garbhadhan* sacrament or ceremony is often not observed in Bengal and never observed in other provinces. Consequently, it would appear to follow that the vast majority of the followers of the Hindu religion have imperilled their salvation and have incurred the gravest penalties both in this world and the next. It is sufficient, I think, to state the case in this way to show that the *Garbhadhan* ceremony is only regarded as necessary to salvation by an infinitesimal minority, if by any. I say 'if by any,' because, as I have said before, it is clear that no one visits, or seeks to visit, the omission to perform this ceremony with any pains or penalties of any sort or kind, or even with that disapproval and shunning of companionship by which the religious in all countries mark their abhorrence of sins which can only be dealt with by a higher than any earthly authority. But what real ground has any one for maintaining that the performance of this cere-

mony on this particular occasion is essential ? So far as I can see, the doctrine rests on one text, and one text only, which equally competent scholars to those who oppose the Bill interpret in an entirely different way. They apply, that is, the word 'first' to the words 'auspicious day,' not to the word 'occurrence'. I am not a Sanskrit scholar, but yet I will venture to choose between these two renderings. It is an accepted rule that, in interpreting a document or a series of documents, one must consider the whole, not a part. Now, the translation favoured by the opponents of the Bill leaves this text entirely isolated and opposed to a great body of other texts which prescribe a later period as the proper one for the consummation of marriage, and emphasize the evils of too early maternity. But the translation favoured by those scholars who support the Bill entirely reconciles these apparent contradictions and leaves the precepts of the Hindu religion regarding this sacrament free from ambiguity and far removed from that position of antagonism to the best interests of the people, moral and physical, which the opponents of this Bill would maintain and enforce. I therefore adopt that translation without doubt or hesitation and support the Bill with an entire confidence that it will in no way injure or interfere with the religious feelings and practices which are as dear to our Hindu fellow-subjects as ours are to us. It is a source of great satisfaction to me that in arriving at this conclusion I am supported by the opinions of those two great and enlightened Princes, the Maharajas of Travancore and of Jeypore. They are admittedly entirely orthodox adherents of the Hindu religion. Their countrymen may without misgiving accept their assurance that this Bill does no violence to the dictates of their common faith.

"As to the necessity of the Bill, it is no answer to say that outrages upon immature girls are uncommon. However uncommon they may be, the law should deal with them when and where they occur. Not a few cases have been cited which have come under the observation of competent medical men. The lady doctors who some time ago addressed a petition to Your Excellency on this painful subject—a petition which found its way into the newspapers and has been published throughout the length and breadth of India—cited some fourteen truly terrible cases of which they had personal knowledge. Now, lady doctors are of but recent advent to India. They are a mere drop in the ocean among the 250 millions, or more, of people who inhabit this country. If in the course of the short experience of these few competent observers so many as fourteen cases have come to light, how many hundreds—nay, thousands—must not have occurred far from the

light, in the privacy of the zenana, in the secrecy of Hindu family life? I fear that these cases are not uncommon, but the contrary. As that ornament of the Madras Bar, Mr. Subramani Iyer, says, 'it is significant that the existence of the vicious practice so severely and so justly condemned by medical authorities is not denied, except in a half-hearted way.' I wish it could with truth be said that the Bill is not necessary; but it cannot be. Why, my Lord, to say nothing of the cases cited by my hon'ble friend Sir Andrew Scoble, it appears from the *Englishman* newspaper of yesterday that a most barbarous case of this kind, in which the accused person is a Mussalman and the facts seem to be clearly established, is at this moment under the consideration of the High Court.

"As to the efficacy of the law as it will stand as amended, I think it is extremely probable that very few cases will be brought forward under it. It is not, in fact, at all desirable that cases of this kind should often come before the Courts. I concur with the opponents of the Bill that the unfortunate child-wife will, in such cases, be at least as great a sufferer as the husband to whom she has yielded or who has taken advantage of his position to injure her against her will. I can also understand and sympathise with the feeling that even the institution, to say nothing of the successful prosecution, of such a case will be destructive of the honour and future comfort of the families it affects. But the Select Committee have taken such steps as seemed to them feasible to prevent the trial of such cases by incompetent and inexperienced persons, and to prohibit enquiries into them by the lower grades of the police—a class of public servants to which scant justice is sometimes, I think, done, and which is unfortunately the object of more suspicion than it seems to me always to deserve. I trust that these safeguards will be effective, and that the magistracy will carefully weigh the responsibilities which lie upon them in cases of so delicate a nature as those arising under this law, so that in the working of the law there may be no occasion for offence or complaint. The fewer cases there are, the better I shall be pleased. But it does not follow that because the cases are few the law will be ineffective. It might almost as well be argued that, because murders are happily few, the law making murder a punishable offence is not required. I am quite unable to concur with my hon'ble colleague Sir Romesh Chunder Mitter, whose ill-health and consequent absence we must all regret, that 'the effects of legislation are neutralised when it is opposed to the opinion of those on whom it has to be enforced.' If my hon'ble colleague's views were correct, dacoity would be rampant and burglars the masters of the situation. The efficacy of the law depends on the way in

which it is enforced in some cases, but in many others on the way in which people know that it will be enforced, if need be. This law will in my belief be one of the latter class. There can be no fear now that its existence will not be generally known, and the very fact of its existence will tend to impress the necessity of caution both on husbands who may be inclined to make an improperly early use of their rights and on that far more blameworthy class, the people who put husbands and girl-wives into situations of difficulty and temptation. It is admitted that the elder members of families, especially the women and especially in Bengal, are in the habit of allowing husbands and girl-wives to associate far more closely than is at all wise or even fair. It will be well that such persons should understand that the abettors of crime are punishable as well as the actual perpetrators of crime.

"My Lord, I should not have ventured to occupy the time of the Council to-day by speaking on this Bill but for the fact that, besides members of the Executive Government which introduced the measure, I was the only English member of the Select Committee. As occupying that position, it seemed to me that to give a silent vote would be disrespectful to the great body of my fellow-subjects whom the Bill affects. I earnestly hope that, distasteful though the Bill may now be to some of them, they will all in time come to recognize it as a proof of the wisdom and benevolence of the Government, as assisting their leaders in setting before the masses a higher and purer moral standard than that which some now recognize and follow, and as promoting the physical improvement of the generations which are yet to come."

The Hon'ble RAO BAHADUR KRISHNAJI LAKSHMAN NULKAR said:—

"Before the Motion is put to the vote I have to make some observations, for the length of which it is perhaps unnecessary that I should apologise after the opposition which has been raised against the Bill in certain quarters, and especially because I have, for some time past, felt the absolute necessity of some such measure, and have urged the same upon the attention of the hon'ble member in charge of the Bill since I joined this Council fourteen months ago. I think the time has now arrived when I am bound to justify myself not only before this Council but also before my countrymen who have thought it fit to offer an apparently vehement opposition to the measure.

"I wish to express my deep regret at the enforced absence of my hon'ble friend Sir Romesh Chunder Mitter, whose health, I grieve to say, has been

indifferent for the last few years, and who has found himself unable to be present at this meeting and the previous one.

"I wish it to be clearly understood that none of my remarks upon the adverse criticisms of the Bill need be necessarily taken as directed towards the observations which have fallen from my hon'ble friend Sir Romesh Chunder Mitter, and which the opponents of the Bill have chosen, and very wrongly chosen, to regard as hostile to its main principle. He has been careful to tell us most distinctly at the outset that if he could believe that the measure was necessary for 'the repression of crime', or was calculated to have 'the effect of remedying to an appreciable degree the evils of early marriage', he would have been very glad to support it, notwithstanding the religious objection he has pointed out. Further, in the remarks in his note of dissent from the Select Committee's Report, while still holding the opinion that the measure was likely to cause more harm than good, he has endeavoured to make his position clearer by admitting that 'there is no disagreement at all between the injunctions of the Shastras and the principle upon which the Bill is based'; that the practice which is prevalent of allowing child-wives to sleep with their husbands before the former 'attains puberty is certainly pernicious'; that speaking for himself he 'would extend the restriction to a maturer age', namely, up to fifteen or sixteen years, in order to avoid 'the greater evil' of 'immature maternity', since, 'in a vast majority of cases conception takes place after the age of twelve years', and that 'consummation of marriage before the age of fifteen or sixteen should be held reprehensible'. Almost the only point of importance on which I have the misfortune to differ from him is that I consider the remedy he has proposed as worse than the evil, and, if adopted, would open a wide door to the perpetration of the crime with perfect immunity, and so render the proposed law a complete nullity. As a similar alteration of the Bill has been proposed by others from outside this room, I shall deal with it further on along with other proposals and suggestions which have been made to the Council.

"Now, the Bill is objected to by its opponents on several grounds, among which may be mentioned:—

(1) It is against the Hindu religion in that it will prevent the performance of the rite of *Garbhadhan* (impregnation ceremony) at the first occurrence of a certain event in the child-wife which sometimes takes place before the age of twelve years, because it is alleged that the Hindu religion commands the observance of this rite at the very first occurrence of that event, the rite being incomplete without immediate consummation of the marriage.

(2) The proposed law, so interfering with 'the religious belief and worship' of the people, would amount to a direct breach of the promise of Her Majesty's Proclamation of 1858.

(3) The evil against which the proposed law is directed has no existence, but, granting that it does exist in any appreciable degree, the existing law against hurt, grievous hurt and culpable homicide is sufficient to adequately punish the offence in question.

(4) There can be no such offence as rape between husband and wife; such is not recognized by the English law, and therefore its existence in the Indian criminal law is an anomaly, and as such must not be extended.

(5) The proposed law would lead to police oppression and false charges by enemies.

(6) The new law would defeat its own ends by banding the people together for effectual evasion of it by perjury and forgery, and so would have the effect of completely demoralizing them; whereas at present the public are becoming alive to the necessity of reform of their marriage customs, and are slowly but steadily introducing such reforms, which they will cease to do in future in retaliation of the proposed interference with them.

"Before I proceed to examine the religious argument I must explain once more that by doing so I do not recede from the position I took in my remarks at the introduction of the Bill, namely, that, if the religious provisions, customs and usages of the people come in the way of legislation for the adequate protection of the weak and helpless against the strong, such provisions, customs and usages ought to be disregarded.

"Now, in an examination of the merits of the objection to the Bill from the religious point of view, the first difficulty one encounters is to know practically what really is meant by the expression 'Hindu religion.' There are the written works attributed to divers ancient inspired sages, whose age in history it is not easy to fix, and whose conflicting directions on points of importance it is not always possible to reconcile or explain satisfactorily To add to this almost insuperable difficulty of arriving at a proper solution of the problem set before us by the opponents of the Bill, the practice or customs and usages of the Hindus belonging to innumerable castes, sections and religious subdivisions, most of them of modern origin, differ so widely from each other and interminably vary in different districts and divisions of the Indian continent, that scarcely any of those customs or usages can possibly be 'duly' taken into account as a reliable or practical guide in framing any uniform criminal law for the empire.

" However, since we have got to make the best of our way through the mazes of such conflicting authorities, we must have recourse to experts who could speak impartially from outside the vortex of the present agitation. For the written Hindu law on *Garbhadhan* we have to look to such works as the Vedas, Shrutis and Smritis; and these have been subjected to a most searching and exhaustive examination in most parts of India both by pundits and by Sanskrit scholars of Indian and European reputation. As may be expected on such occasions, these two classes of expounders have come to different conclusions. On the diverse the authorities and commentators consulted by each, a great majority of the pundits have declared in favour of the contention that the rite of consummation (*Garbhadhan*) must be performed at the very first appearance of a certain sign of puberty. On the other hand, scholars who are accustomed to carry on literary and antiquarian research on a scientific system and in the light of history—ancient and modern—have come to the opposite conclusion, and have declared that, according to the letter as well as the spirit of the directions of the Hindu sages quoted by both, not only that the rite of consummation need not be performed at the very first appearance of that sign, but that for an honest and faithful compliance with those directions the husband must wait till he is twenty-five and the bride sixteen years of age. Trustworthy scholars of world-wide renown, like Dr. R. G. Bhandarkar of the Dekkhan College, Mr. R. C. Dutta of the Bengal Civil Service, author of *Ancient India*, the Hon'ble Justice K. T. Telang, an acknowledged authority on Hindu law, and other competent experts, have, each independently and from his individual point of view, come exactly to the conclusion at which the learned Director of Public Instruction in Bengal, Sir Alfred Croft, has felt himself compelled to arrive after consulting and examining the leading pundits in Calcutta by direction of His Honour the Lieutenant-Governor. I feel sure that the Council will agree with me that Sir Alfred Croft's report is correctly described by His Honour as showing, 'with great wealth of research, how dangerous it is in this, as in other controversies, to select a single text for the dogmatic support of a principle without reference to the context, to the general spirit of the writer, and to other texts which limit, control, and sometimes even contradict, the particular text on which reliance is placed.' I have no doubt that on carefully reading that report hon'ble members will be struck with the spirit of impartiality and the high judicial tone which pervade every part of Sir Alfred Croft's criticism. I will not therefore take up the time of the Council on this point beyond saying that, according to the authorities of these scholars, it is clear that the Hindu Shastras contain no explicit injunction commanding the performance of the rite of *Garbhadhan* on

the very first appearance of the sign of puberty; but, on the contrary, some of them (and among them Raghunandan himself) even require that, in addition to the exhibition of that sign, the *age* limit of sixteen years in the bride must be reached before consummation of marriage could properly take place. For a correct appreciation of the several texts quoted in the course of the controversy we must remember (as sir Alfred Croft cautions us to do) that they are all—

'governed by the underlying principle that a son is to be begotten—not a sickly or short-lived son, but one who will be able to do the father spiritual service. In view of that dominant principle it seems to involve some violence to urge that the spirit of the Shastras is obeyed by enforcing cohabitation at the first sign of puberty in the wife. It would appear to be a more reasonable principle to follow that any text prescribing the time at which *Garbhadhan* is to be performed should be governed by and read in subordination to whatever texts independently declare the age at which cohabitation is permissible, since, as before stated, the only meaning of the sacrament is to consecrate that act.'

"The other scholars I have named have come to the same conclusion. Dr. Bhandarkar in his note on the subject sums up:—

'5. That this conclusion as regards delay in the consummation of marriage is confirmed by the circumstance that the sacred writers seem to have their eye on the doctrine of Hindu medical science that a girl is not in a condition to give birth to a healthy child before the age of sixteen.

'6. That the consummation of marriage only when the girl has fully developed is quite in keeping with the spirit of the Rishi legislators, as the begetting of a son able to do credit to the father is their sole object, and its early consummation is entirely opposed to their spirit, as the result of it is barrenness or weak and sickly children.'

"All orthodox Hindus claim the remotest imaginable antiquity for their religious scriptures; and, seeing that marriages between adults only were allowed in ancient India, it is absurd to look to those scriptures for authority in favour of consummation with a bride under twelve years of age.

"I may point out in passing that, among others, Sir Alfred Croft also has clearly shown that, even from Raghunandan himself, 'not a single text * * can be cited in which the performance of *Garbhadhan* at the first occurrence of the *ritu* is enjoined." On the contrary, Raghunandan, in his *Jyotish Tatwa*, a work which governs the time of all religious rites, fixes the bride's age at full sixteen years as fit for consummation of marriage. And yet the opponents of the Bill in Central Bengal had placed their entire reliance on Raghunandan as their ultimate authority at the beginning of this controversy, though we were at the

same time told that we had nothing to do with the correctness or otherwise of his interpretations, so long as he was trusted by his followers. These same opponents have since shifted their position somewhat, and have been trusting and quoting other authorities, almost to the exclusion of Raghunandan, all of which have been thoroughly sifted by the scholars I have named.

"As a tacit reply to the directions of the ancient authorities which are adverse to the *Garbhadhan* theory, the opponents have recently relied more upon their customs and usages founded on their religious belief. They argue that the legislature is not entitled to go behind this belief, but is bound to respect the same. They are not prepared to admit any proposition which is not 'sanctioned by Hindu law and custom,' and urge with great earnestness that the ancient law-givers legislated for 'giants of the Vedic age,' not for the 'pigmies' of the present age of *Kali-jug*, who 'must not be put on a level with' those giants, but have to follow the ordinances of mediæval writers (whatever that may mean) and, above all, their own religious customs and 'crystalised habits,' as they describe them. And what are these customs and 'crystalised habits,' particularly in Bengal, with regard to cohabitation? According to them, from the second or third night after marriage, the child-wife must invariably share the same bed with the husband 'whenever both are under the same roof', which they almost always are, because we are further told that the child-wife has to live constantly with the husband's family to be initiated into its ways; that such passing the night in the same bed is innocence itself; that all the 'charms of ante-nuptial courtship' known in the West may be claimed for such 'communion' between the 'young couple'; that 'early assimilation is imperative, or otherwise the very object of marriage is thwarted'; and lastly, we are asked, with much gravity, since 'the young couple in orthodox families never meet each other in the daylight, when but at night can there be communion?' After this and other graphic descriptions of what takes place under the authority of religious custom and usage, we are again asked, in all seriousness I believe, 'where then is the authority for the assumption that sleep and consummation are synonymous?' The anathema against premenstrual consummation 'is a sufficient safeguard.' Is it though in practice, I beg leave to ask? In addition to the overwhelming evidence to the contrary, I will only cite that of Pandit Sasidhar Tarkachuramoni, one of the most active opponents of the Bill. He has publicly stated, in alluding to this same 'anathema,' that 'the Hindu society does not believe this custom,' of premenstrual intercourse, 'to be a great sin, and hence the degradation of the Hindus.'

"It will thus be seen that to respect the alleged Hindu law and custom of *Garbhadhan* at the very first appearance of a certain sign of puberty would amount to a tacit acceptance of the most revolting usage to which child-wives are systematically subjected (at least in these Provinces) almost from the day of their marriage—a usage, or process, which must inevitably result in an unnaturally early appearance of those signs, and in acts involving danger to life and certain detriment to the health of the helpless girls.

"There is another matter-of fact consideration which also claims attention, and that is, what is the actual practice as regards the *Garbhadhan* rite in this Province, the birthplace of the argument? Innumerable letters under the signatures of Hindu gentlemen of education and position have appeared in the Native papers of Calcutta during the last two months, stating, without contradiction, that this rite has almost fallen into desuetude all over Bengal, and completely so in families of almost all the principal oppositionists of the Bill in this city. Babu Protap Chandra Mozoomdar is literally borne out by the general testimony before us when he says that 'in nearly ninety-eight per cent. of respectable Hindu households in Calcutta and outside, this boasted *Garbhadhan* ceremony is never performed, because not known, and among the masses it was never heard of, its place being taken in both cases by certain disgraceful female rites abhorrent alike to religion and decency.' A *Purohit* or officiating Hindu priest informed Sir Alfred Croft that on an average 'he attended at thirty marriages for every *Garbhadhan* ceremony.' When we remember that these religious rites are prescribed for the *Dwija* or twice-born high castes only, who themselves form numerically an extremely small portion of the total Hindu population, this percentage dwindles down to extreme insignificance. As to the probable number of instances of the alleged necessity of the rite before the age of twelve years among such a numerically small fraction, that number is bound to become still smaller, if it did not altogether disappear, provided the 'event' is not forced on by the unnatural practice, unknown and unclaimed out of Bengal, of compelling the child-wife to prematurely share the same bed with her husband. Yet we are expected to believe that the Hindu masses who flocked to the maidan of Calcutta the other day were actuated by a sincere or honest belief in the rite of *Garbhadhan*. As to other parts of India the rite itself is practically unknown in Gujarat, Kathiawar, Sindh, the Punjab and the North-Western Provinces. If it is commonly observed anywhere in India, it is so in the Dekkhan and in Madras; but there it is as often deferred as not, after the first appearance of the sign of puberty, and the necessity of its earliest performance, such as is now

insisted upon in Bengal, has not been recognized. Raja Sir T. Madhava Rao, whose real opinions on this point have been generally misrepresented of late, wrote a few years ago that consummation 'may be postponed for a year or two after the attainment of puberty. The Shastras, the customs and natural reason do not forbid it.' I am quoting the Raja's own words. It is true that at a few meetings in the Bombay Presidency the Calcutta argument has now been taken up for the first time, undoubtedly in response to the Bengal agitation. It had not suggested itself to those who held the public meeting at Madhaobag in Bombay in 1886, nor to the deputation of Shastris and pundits of Poona who waited on Lord Reay in the autumn of the same year, although both these movements were the outcome of alarm at the unofficial suggestion of the late Sir Maxwell Melville, member of the Executive Council of Bombay, in a private reply to Mr. Malabari's request, that Government might raise the age of consent.

"Before concluding my remarks on the religious aspect of the question I must not omit to draw the attention of the Council to the testimony which we have received from different and important centres of Hindu orthodoxy in India in favour of our contention that the measure is not in any way contrary to Hindu religion. This testimony is contained in communications and writings of such leaders of orthodox Hindu communities as His Highness the Maharaja of Travancore in the southernmost corner of India, His Highness the Maharaja of Jeypore in the centre of Rajputana, and the Maharaja of Vizianagram in the north-east of Madras. The Maharaja of Travancore, speaking of the Bill, says :—

'No Hindu who has at heart the real welfare of his community will expect the Government to shut their eyes to the grossest outrages on humanity. That the Bill, if passed, may be felt as an outrage on orthodox susceptibilities of the Hindus is an imaginary anxiety, with no real ground to stand on. There is no question which the Hindus, the orthodox portion of it, cannot, by a twist or two, connect with their religion.'

"His Highness the Maharaja of Jeypore 'cordially supports' the measure, having himself fixed the age of marriage of girls at fourteen years in his territory after consulting the highest religious authorities at his Court; and His Highness thinks that in the present instance, considering all the circumstances, it was indispensably necessary to fix an *age* limit. His Highness adds :—

'Instances of rapid or abnormal development like monstrous births may be known, but these are rare, and therefore ought not to stand in the way of fixing the age of consent at twelve years, which is undoubtedly a quite safe and fair limit.'

"The Maharaja of Vizianagram, in a pamphlet just published, approves of the Bill, and states:—

'I will defy one and all, to whatever caste or creed they may belong, to show on religious grounds that such protraction' (of the rite of *Garbhadhan*) 'is in the slightest degree to be considered a sinful act, particularly since it can be maintained that such procrastination is intended for the well-being, not of a few Hindus simply, but in the interest of all Hindus, not only of the present generation, but of generations yet to come. I will equally defy any one, bearing the physiological condition of human beings in mind, and especially that of Hindus whom the Bill concerns, to assert that this immunity, intended by the Bill for the women of this country, from ignorantly suffering the ceremony to take place at an injuriously early period of their lives, is in the least degree sinful either according to the spirit or the letter of the Shastras. When I say ignorantly, of course I allude to ignorance not only of physiological laws but also of the spirit and letter of the law of their own religion itself'

"Raja Murli Manohar, a leading orthodox Hindu nobleman of Hyderabad (Dekkhan), advocates the raising of the age of consummation to fourteen years. Pundit Ram Misra Shastri, Professor of Hindu Philosophy in the Government College of Benares, and President of the Literary Society of Benares Pundits, also cordially supports the proposed legislation and quotes authorities on Hindu law in favour of the absolute necessity of postponing the *Garbhadhan* rite of consummation until the bride shall have attained full maturity and complete physical development. Among the leading citizens who took part at the public meeting which was held in support of the Bill at Lahore, there were representatives from such religious and influential bodies as the Sanatan Dharma Sabha, the Singh Sabha, and the Arya Samaj.

"I may be permitted to mention here that, since almost any custom or practice could be supported by the quotation of single or isolated texts, the general tendency of the great majority of orthodox Pundits all over India is to find out, interpret or explain such texts from the Shastras as may meet the exigency of the occasion or the wishes or convenience of their patrons. One of them told Sir Alfred Croft that he could 'prove from the Shastras that the Bill is right or the opposite.' For an example of this tendency one of this class of learned men, who rejoices in the distinguished title of Mahamohopadhaya and is employed to teach the ancient Hindu literature and philosophy in the leading Government College at Bombay, has (in a letter published in the Vernacular papers of that presidency in support of the *Garbhadhan* argument) cited one of such texts in the name of *Rishi Gautam*, to the effect that 'a man distressed'

by uncontrollable desire 'may go even to a female of eight years for intercourse, otherwise' (such and such waste which I must omit mentioning) 'is a cause of the degradation of a thousand families.' Here is a textual authority quite in favour of the early 'communion' so highly valued in Bengal; and according to this *Gautam*, perhaps Pandit Tarkachuramoni has no cause to deplore the custom of premature cohabitation prevailing in certain parts of India as quite irreligious. But, on the contrary, this Council may be asked on that authority to abandon all further legislation and even to annul, as contrary to Hindu religion, the existing provision in the Penal Code which ensures some little protection for female children against outrage by their husbands.

"The Proclamation of 1858 of Her Majesty the Queen has also been appealed to in support of the *Garbhadhan* argument; and the contention deserves a passing notice, not because there is any truth in it, but because that historical document, which we cannot value too highly, has been always too irreverently or vainly named in support of questionable practices in the name of Hindu religion. I think this constant abuse of it deserves to be thoroughly exposed once for all, and I am glad the hon'ble member in charge of the Bill has endeavoured to do so. That Proclamation is undoubtedly India's first Magna Charta, as it brings, for the first time, sovereign and subjects face to face, so to say, and seeks to attach them together by defining their respective duties towards each other Beyond this formal commemoration of a great historical epoch, there is scarcely any policy inaugurated by that document which was either new or which had not been repeatedly and clearly enunciated and put into practice for over a century of British rule under the Hon'ble East India Company. The Proclamation must be looked upon as a compendium of that policy on each and all subjects which with it deals, in language so careful and explicit as not to be open to misconception. None of its terms could be held to deprive the Government of the right of extending protection to its subjects against wrong, notwithstanding explicit texts of religious books or immemorial custom, which could be cited in support of that wrong.

"For instance, the Government has exercised the right of giving such protection on many occasions before as well as since the issue of that Proclamation. The inhuman practice of exposing children to death in the Sundarbans or Saugor Islands, in fulfilment of religious vows, was put a stop to about the end of the last century, and section 317 of the Penal Code, passed two years after the Proclamation of 1858, provides punishment for such offences. The cruel

lawless practice of *Koorch* by Brahmins in places like Benares was prohibited by law in 1795. The exemption of Benares Brahmins from capital punishment was abolished in 1817. The practice of *Dharna*, usually resorted to by Brahmins, was declared to be a crime in 1826. Sati was abolished in 1829, and slavery in 1843. And yet each and all these practices were based on religious belief and long-established custom. The intolerant Hindu and Muhammadan religious law which disabled a convert from their respective religions to any other from inheriting any property was annulled in Bengal in 1832. At the time the Hindus of Bengal appear to have acquiesced in this new law silently; yet strangely enough, when, in 1850, it was extended to the rest of India, Bengal joined Madras in raising a cry of 'religion in danger,' and I believe even sent petitions to Parliament against it, though the Muhammadans seemed to be indifferent about it. In 1856, when the Widow Marriage Act was passed through this Council, the same cry of 'religion in danger' was raised, especially in Bengal, and Raghunandan's alleged interpretations of the Shastras played as conspicuous and ignominious a part in that as in the present controversy. I say ignominious, because, according to the hon'ble mover of the Bill, Raghunandan was found to have in his day advocated the cause of widow marriage, and intended that his own widowed daughter should marry again.

"The Penal Code, which was passed in 1860, two years after the Proclamation, treats intercourse by a man with his wife under ten years of age as rape; and since the sign which is claimed as a sufficient test of puberty is known to have sometimes appeared before that age, the legislative violation of the Hindu religion attributed to the proposed law actually took place in 1860, now thirty years ago. Yet we heard nothing of it at the time, nor do the opponents ask even now for the abolition of the law of 1860. In 1866 the Bombay Legislative Council passed an Act to relieve Hindu sons, grandsons and husbands who had married a widow from the liability to pay the debts of their deceased fathers, grandfathers and the widow's former husbands, severally, and to limit such liabilities to assets actually inherited by the defendants. This law had to be passed in the interests of reason and justice, in the teeth of Hindu religious law as interpreted by the Bombay pundits, and which, up to that time, had compelled the British Courts of Justice to helplessly lend themselves to do gross injustice to the parties concerned. According to the religious scriptures the non-payment of ancestral debts to the last farthing by sons, &c., irrespective of assets, results in the indebted deceased finding no place in heaven. And yet that legislation was hailed with great

satisfaction, and good Hindus have ever since taken full advantage of that relief and saved their pockets. In the present instance their religious scruples are outraged beyond endurance because the proposed law will compel them to abstain from intercourse with their child-wives until the latter shall have completed their age of full twelve years!

"I would now briefly examine the contents of the Proclamation itself. The part relied on by the opponents as depriving the Council of the right to pass this Bill runs as follows:—

'We do strictly charge and enjoin all those who may be in authority under Us, that they abstain from all interference with the religious belief or worship of any of Our subjects on pain of Our highest displeasure.'

"To be fully understood this part of the Proclamation must be read along with the one which closely precedes it, where Her Majesty says:—

'Firmly relying Ourselves on the truth of Christianity * * *, We disclaim alike the right and the desire to impose Our convictions of any of Our subjects.'

"Thus, the 'charge' referred to was clearly intended to warn all public servants of the Crown 'to abstain from interference with the religious belief,' &c., that is, to abstain from imposing the Christian religion on Her Majesty's subjects. We have had a convincing proof, if one were wanted, of the determination of Government to adhere steadfastly to this sound policy of religious neutrality in a recent summary dismissal of an European officer in the service of Government who was found guilty of offending against that policy.

"People would do well to refer to another part of the same Proclamation which imposes upon the Indian Government the obligation to secure to all Her Majesty's subjects in India the enjoyment of 'equal and impartial protection of the law;' and also where Her Majesty wills 'that generally in framing and administering the law, due regard to be paid to the ancient rights, usages and customs of India.'

"Section 19 of the Indian Councils Act of 1861, which was passed by the British Parliament in that year (three years after the Proclamation), expressly empowers the Governor General to accord his sanction to the introduction of measures 'affecting the religion or religious rights or usages of any class of Her Majesty's subjects.'

"I therefore hold that it is in strict conformity with these injunctions that the present legislation is undertaken by Government as absolutely necessary to give 'equal and impartial protection of the law' to female children against imminent harm to life and limb, to the exclusion of proposals made to it in the interests of social reform in which no such necessity of protection against actual criminal acts of violence was shown. This point was fully explained by Your Excellency at the time of the introduction of the Bill.

"In this connection I may also refer to another argument of the opponents that, by the terms of the Government Resolution of 1886 on Mr. Malabari's notes on *Infant Marriage and Enforced Widowhood in India*, Government is bound to desist from passing the measure. Besides having no connection with the subject-matter of that Resolution, the policy of the Bill on the table is clearly supported by the general principle laid down in it, namely, 'when caste or custom enjoins a practice which involves a breach of the ordinary criminal law, the State will enforce the law.' Premature intercourse with child-wives is already an offence according to the ordinary criminal law of India, and this Bill is intended only to correct and improve that law to an extent which is found to be absolutely necessary to make it adequately deterrent and effective.

"As to the assertion that the evil against which the proposed amendment of the law is directed does not exist, because a careful search of the reports of the Bengal High Court shows no convictions of husbands for rape against their child-wives under the existing law, my simple reply to this rather bold assertion is that those who hazard it should carefully read the statistics and the results of professional experience and opinions of eminent medical authorities given in the papers published by Government in January last. There they can read 'the ghastly tale' of crime of this nature which is being secretly committed. Let them refer to Dr. Chevers' *Manual of Medical Jurisprudence for Bengal*, published so early as 1856, where he has described the artificial means employed to fit child-wives for the earliest possible intercourse with their husbands. Dr. Chevers complained that under the then existing law the crime went practically unpunished. In his latest edition of 1870 they will find that, after ten years' experience of the present law, he has given further statistics to prove that the ten years' age limit in the Penal Code still left the crime almost untouched, and earnestly suggested that the age limit should be increased.

"I have not forgotten that the Shobha Bazar memorialists have forwarded a number of statements in the name of medical practitioners of various standings,

certifying to the fact that no case of injury to child-wives from intercourse with husbands came before them for treatment. But I need hardly say that such negative evidence when opposed to positive can have no practical weight in deciding the point. It also seems probable that the collectors of this kind of negative evidence have had to reject some which, as proving the positive, did not suit their purpose. It appears that at least one such case has been brought to notice. Dr. Basu (a Bengali gentleman), Surgeon Major and Civil Surgeon at Mymensing, publishes a letter in the *Indian Mirror*, dated the 9th instant, stating that in response to a question put to him by a Native nobleman and a prominent leader of society in Calcutta, if any such case had ever come to his notice, either professionally or otherwise, he replied that it had been his 'lot to know certainly two instances in which fatal consequences took place.' In one a girl of nine years died of the injuries inflicted, and in the other, under twelve years, 'was suffocated to death by the husband to stop her screaming in agony during the act of cohabitation.' He knew of 'a few other cases in which more or less severe injuries were caused to undeveloped girls by cohabitation,' and 'just now there is such a case pending trial' at Mymensing. A report also comes from Moorshedabad of a similar case which occurred there at the beginning of this month and is under reference to the Calcutta High Court, probably in consequence of the recusance of the jury to return a just verdict. I have carefully consulted the Bengal Police Reports of recent years, and they all show that such occurrences are by no means rare in which husbands maim or kill child-wives for refusing to allow them to have intercourse with them.

"In a petition sent to His Excellency the Viceroy in September last, praying that the age of consent be raised to fourteen years, fifty lady doctors practising among Native women in India have given the harrowing details of suffering and cruel deaths among thirteen cases of child-wives which came before them within a few years' practice. The ages of the girls ranged between seven and twelve years—(1) of ten years 'unable to stand'; (2) of nine years 'beyond surgical repair'; (3) of ten years 'bleeding to death'; (4) of nine years 'lower limbs completely paralysed;' (5) of ten years 'condition most pitiable'; (6) of eleven years 'will be crippled for life;' (7) of ten years 'crawled to hospital on hands and knees and had never been able to stand erect since her marriage.' The husband of No. (2) 'had two other wives and spoke very fine English,' of No. (3) 'was a man of about forty years of age, weighing not less than eleven stone', and of No. (4) 'demanded her after one day in hospital "for his lawful use."'

"If all this evidence fails to convince the opponents that the evil does exist and requires a more stringent remedy at the hands of the Legislature to secure adequate protection of child-wives against such fiendish husbands, we can only pity them for their moral depravity.

"The remedy which other sections of the Penal Code provide against hurt, grievous hurt and culpable homicide, and which the opponents consider as sufficient to meet the evil, has hitherto egregiously failed. Juries often sympathised with the accused, thinking that he simply exercised his 'marital rights', and that the result of such righteous act was a mere accident. And the Courts failed in several cases to inflict adequate punishment under those sections, obviously owing to the present criminal law having silently furnished a plea of extenuation by the fact that the legal marriage between the female child and the accused husband invested the latter with 'marital rights' against her. Section 310 is just in point as showing that it is necessary for the law to take special notice of particular offences peculiar to localities or communities. The offence of thoggi is there defined as 'habitually associating with others for committing *robbery* and *child-stealing* by means of *murder*.' Now, the Penal Code provided separately for each and all these offences of robbery, child-stealing and murder, and yet the secret assemblies for the habitual commission of each and all these offences at one and the same time had become such a common terror to the country, that a special and stringent provision was found to be absolutely necessary to strengthen the hands of the Courts of Justice to award the highest punishment in extreme cases, irrespective of actual mischief proved or not proved in each case. It does not, however, necessarily follow that a boy by merely belonging to a gang of thugs along with his parents is or will ever be sent to jail for life. He will be (as he in fact is) sent to a reformatory to be trained to peaceful pursuits.

"The opponents also complain of the acts of husbands being described as rape, because, they say, there cannot be such an offence as rape between husband and wife. It is also contrary to English law. I beg to reply that, if the law of rape between husband and wife is unknown in England, neither is child-marriage or ravishment of child-wives known there. By what other name would these objectors call an act by which life and limb is recklessly endangered? Does not such a voluntary act on the part of those who are bound to protect the child according to all known laws, human and divine, deserve to be stigmatised, if possible, by a worse name? In such cases is not the moral turpitude of the

husband greater than that of a stranger? Whose duty to protect the girl against the harm is more binding? The moral or rather social harm done by the stranger is certainly great: but the wanton use made by the husband of his social and legal power over the helpless child in breach of a sacred duty to protect her involves, in my estimation, a much higher degree of moral turpitude. The only other description that might be considered as appropriate would be to call it 'doing an act knowing or having reason to believe that it would result in culpable homicide' as defined in the Penal Code, the punishment for which is the same as that prescribed in the Bill on the table. I should have no objection to substitute this definition of the offence if it were proposed as a means of sparing the feelings of the opponents without palliating with the offence.

"Among the discreditable and frivolous objections raised by the agitators against the Bill may be mentioned a few. If girls are kept away from their husbands till the age of twelve years, such of them as may have the first sign of puberty before that age 'must seek some other course to satisfy their desires. Hence the Bill will promote prostitution to a great extent.' I am quoting the evidence of an M. B. of the University, put forward by the Shobha Bazar memorialists against the Bill. Other objectors fear that in the undivided condition of Hindu families the honour of girls in that predicament, unless they are at once introduced into the bed-rooms of their husbands, would not be safe from others in the house. Others fear that sons born of mothers under twelve years would be declared illegitimate, and in case of deaths of husbands before the child-wives reach the age of twelve years, and consequently before such possibility of begetting a son and heir, valuable estates would go out of the family to collaterals and thereby bring on ruin on the families concerned. Such observations deserve to be noted, not because they require any consideration in connection with the business before us, but simply because they indicate partly the real character of the agitation, and perhaps deserve some consideration at the hands of those who, in other parts of India, have taken up the false cry of 'religion in danger.'

"As to the fear of false accusations by enemies and oppression by the police, alluded to in several petitions against the measure, the Select Committee have considered both the points and amended the Bill so as to reserve jurisdiction over cases in which a husband may be accused to the Presidency and District Magistrates only; and if any such Magistrate distrusts the complaint, and before dismissal or issue of process considers it necessary to make enquiry which he is

unable to conduct himself, he may entrust the same to a police-officer not lower in rank than an inspector. As such enquiry, if ordered, must necessarily take place before the issue of any process at all against the accused, it can possibly involve or authorize no interference whatever by the police with the accused or his relations. The Legislature cannot possibly go further. If the police and enemies were generally disposed to annoy innocent persons in respect to crimes usually committed within the secret precincts of private houses, they had ample opportunity to do so with respect to the offences of abortion and infanticide, in both of which cases the police can interfere and could be used by the Magistrates to a much greater extent than in the present case. As a matter of fact, under the Bill as amended, the offence of rape by a husband is the only offence of its gravity over the whole range of the Indian Penal Code which will henceforward be completely kept out of all police interference without a regular legal process issued by a Magistrate of the highest standing and experience in the district.

"As to the compulsory examination of the person of the child-wife, the hon'ble member in charge of the Bill has pointed out that such compulsory examination is already quite illegal, and the fear of it so generally entertained is entirely groundless.

"I entertain no such fears as those expressed by the opponents that the new law would defeat its own object by banding the people together to evade the same by perjury and forgery. The past history of successful legislation on similar lines to repress secret crimes perpetrated under the cloak of religion and immemorial customs, such as infanticide and organised crimes like thaggi, all tell a different tale. My countrymen are too law-abiding to actively obstruct or resist the law for any length of time. In this case the result will be that some far-seeing, though few, men will make a beginning by keeping their daughters unmarried till twelve years—as my hon'ble friend Sir Romesh Chunder Mitter himself foresees—rather than run the risk of breaking the law. And past experience tells us that such wise and wholesome examples will be more and more followed by others throughout the country. I confidently expect that it is in this direction that this law will ultimately become a dead letter, or rather obsolete. The proposed law is at present wanted all the same to strengthen the hands of parents and guardians and to act as a deterrent on husbands, until it completely changes our habits and customs in the desired direction.

" The assertion that any body or bodies among the orthodox who are said to be at present already introducing reforms in our marriage customs would, in consequence of the new law, abandon the attempt in disgust, and so retaliate against this legislative interference, is equally groundless. I fail to see any such successful attempt in any part of India during the last half a century—always excepting the Brahmos, and also excepting Rajputana, where it is the direct result of over half a century's strenuous exertions of British Residents and Political Officers, acting under instructions of the Governor General, which have had the effect of strengthening the hands of the Princes and Chiefs, and ultimately have enabled them to take energetic steps to complete the necessary reform. My esteemed friend, the late lamented Rao Sahib Mandlik, of Bombay, who is well known in Calcutta and deservedly respected in the high circles which are the centre of the present agitation, formed, in 1886, an association of pundits to undertake social and religious reform on lines approved by the writings of ancient Hindu sages; but he signally failed at the very first attempt to convert the pundits of Bombay to reason and common sense by consenting to re-admit into caste Hindu gentlemen on return from a visit to Europe after undergoing *Prayaschitta* or expiation ceremony. A similar attempt was also voluntarily made in Poona in the same year by the pundits of that place, by forming an association with similar objects, the honorary presidency over which the great Sankaracharya, the head of the Dekkhan Brahmins, willingly accepted; but that also failed in a similar way, with this difference, that it promised at first better hope than the Bombay attempt, because the association had gone so far as to fix the minimum marriageable age of girls at ten years, the maximum of men at fifty, and to declare that giving girls in marriage for a consideration was a heinous sin and crime deserving a severe punishment. But the whole thing collapsed at the crucial point of 'belling the cat.' What authority was to enforce these wholesome rules? The pundits publicly confessed that they had neither the power nor the requisite social influence to enforce their decisions on society, but at the same time they steadfastly refused to accept any help of the Legislature.

" I may here mention that, as a matter of fact, the entire agitation in Bombay and in Poona is exclusively due to a feeling of resentment against the party of progress—a feeling which dates from 1884, and is due to a stranger in religion like Mr. Malabari daring to carry on a crusade of exposure of Hindu social crimes and follies. This resentment found specific expression in the Bombay Madhaobag meeting of 1886, at the Poona pundits' deputation to Lord Reay in the same year, and again at the Poona meeting of October and February last, and the

second Bombay Madhaobag meeting of the last month. In reality no part of the agitation elsewhere has anything in common with the *Garbhadhan* theory of Bengal, and my countrymen in Bombay, when they come to know the nefarious practices in support of which that argument is being used threadbare, will have cause to repent for their folly in having blindly accepted that argument from their brethren in Bengal.

"Some facts are worthy of note as partly showing the misguided character of the opposition on the Bombay side. The chairman of the Bombay meeting against the Bill characterised it as frivolous and useless meddling on the part of the Legislature, perhaps because he personally belongs to a caste in which the marriages of girls seldom take place below fifteen or sixteen years and often long after that age. Some of the prominent promoters of this and of the Poona protest meeting are themselves professed social reformers, and have often publicly scouted the idea of divine origin of the Vedas One of them laughs at religious scruples if such stand in the way of means to secure our political advancement. One pundit, a Mahamahopadhyaya, admitted before friends, on learning from them the true scope of the Bill, that a postponement of *Garbhadhan* till after the bride became twelve years of age cannot be correctly considered as an interference with the Hindu religion; but, he added, he dared not make the admission before the opponents. The chairman of the Ahmedabad protest meeting is himself the head of a most respectable and industrious caste in Gujarat, and has successfully obtained from Government a legislative enactment and, under it, has introduced a set of wholesome rules respecting marriage customs and usages into his own caste.

"At almost every Hindu centre where opposition meetings have been held there were others convened in support of the measure. These latter are naturally less noisy, less numerous and numerically smaller, because in all countries the party of progress is always numerically smaller of the two, and must consist of the thoughtful few. Such is notably the case in India. They, however, include among themselves a very large majority of men who are themselves orthodox Hindus and not out of their caste, as is incorrectly represented by the opponents here.

"But the question arises that, in the midst of all this din, where is the voice of the Indian women for whose personal protection the Legislature is taking all this trouble? My reply is that, if the denizens of the zenana could speak, we

should see the right side of the shield. Some of their sisters, however, who are not cooped up like them, have spoken out. In December last, a petition from the women of India, bearing 1,600 signatures, was sent to Her Majesty the Queen-Empress, praying for the increase of the age of consent to fourteen years. I hold an original letter in my hand to a friend from the good English lady who laboured on behalf of her Indian sisters to get up this petition. She says that she had the petition translated into Gujarathi and Marathi; that she had twelve intelligent Native ladies on the committee who quite understood what they were about; and that she has had numerous intelligent letters from Native ladies all over India in favour of the petition. I trouble the Council publicly with these facts, because some of the opposition organs here have cast unworthy doubts on them as such. Fifty lady doctors also sent (in September last) a petition to His Excellency the Viceroy to the same effect, which I have already noticed a little while ago. Petitions from Native ladies' associations and special meetings have been received by the Council from Bombay, Poona, Ahmedabad and other places. Several Native ladies have written in the public Press in cordial approval of the Bill. I know many of the Bombay and Poona ladies who have signed the petition. Almost all of them belong to orthodox families. I hold in my hand a list of the names and professions of the husbands of the Ahmedabad lady petitioners. Three-fourths of them are high class Brahmins, and the rest belong to respectable and influential castes, all thoroughly orthodox.

"Certain alterations in the Bill have been suggested—some of them by both sides to the controversy; and I will notice them now. The first is that, instead of an age-limit, the usual test of puberty recognized by the Hindus may be substituted. Compliance with this suggestion was not possible for several very cogent reasons. The test is in many cases entirely unreliable, and admits of no satisfactory proof without a personal examination of the girl-wife, enforcement of which is quite out of the question. For obvious reasons the law ought not to throw the burden of proof of such an event of sexual delicacy on the defendant. And the usual evidence offered as to the performance of certain ceremonies is perfectly unreliable as coming from people notoriously addicted to the vice of immature intercourse. The age is the only practical test, and admits of a sufficient degree of proof wherever a system of registration of births and deaths is accurately kept—a system which is now being gradually introduced all over India, beginning with all municipal cities and towns.

"The suggestion to remove the offence from the category of rape I have already noticed a little while ago. Some have asked that the offence of husbands should be divided into degrees according to the gravity of results, and proportionate punishments should be provided for each. Those who make this suggestion lose sight of the central principle of the old as well as the proposed law, namely, female children up to a certain age have to be completely protected from all sexual touch of *man*, be he stranger or husband, such connection between the sexes being considered harmful to the female in the highest degree, without reference to the social position towards her of the doer of that harm. They also forget the main principle which underlies the mechanism of the Penal Code as regards the division and grouping of offences and the punishments provided for each. These latter prescribe the highest punitive measures for the worst degree of culpability of the accused in the commission of each offence. For example, theft in a dwelling-house or by a servant is punishable with seven years' rigorous imprisonment, and yet our everyday experience is that a common house-servant is sent to jail for a few weeks only for trivial theft of his master's property; and habitual thieves, after numerous failures to reclaim them, are awarded the highest term of imprisonment. In the same way, a boy committing simple rape on his child-wife with no immediate injurious results, in consequence of being put into a room with his child-wife by his parents or elders, will probably be imprisoned for a very short term. There was exactly such a case tried by the Deputy Commissioner of Sambalpur in the Central Provinces in which a boy, who was so aided and abetted by his own mother against his child-wife under ten years, was sentenced to six months' imprisonment under the present section of the Penal Code, though the highest punishment provided is transportation for life.

"It is further suggested that this opportunity should be taken to provide punishment of strangers for intercourse with minor girls up to sixteen years. This involves a confusion of two widely different principles, namely, protection of life and limb on the one hand, and securing moral or social purity of minor girls on the other. If a case of absolute necessity of the latter kind of legislation for India could be made out as was done in England in 1885, the question might be taken up and dealt with on its own merits. This is not a suitable occasion for it.

"It is feared by some that immature girl-wives above twelve will remain unprotected under the proposed law—a state of things which will have the effect of husbands feeling themselves at liberty to consummate marriage with such girls of

more than twelve years, even before the arrival of puberty as understood by the Hindus. Such would-be transgressions of the law of religion and nature must, for the present at least, be dealt with by the Hindu religion's 'anathema' against the act of which we have heard so much, or to their own sense of duty towards their helpless girl-wives, until it is clearly proved from experience that such girls also require protection of the law.

"A due consideration of the amount of the aiding and abetting which goes on unchecked in certain parts of India renders it impossible to accept another suggestion, namely, the child-wife or her parents or guardians alone should be declared to be competent to make complaints before Magistrates, who, in the absence of such complaints, should be prohibited from commencing proceedings. Such a provision would amount to insisting on the voluntary complaint of an accomplice, or of the injured child who occupies the position of a hostage in the complete power and subjection of the accused and his relatives.

"Some Anglo-Indian organs of Calcutta allege that this measure has been suddenly sprung upon the Native public, and hence the present agitation. I can show that the facts are quite the reverse. So early as 1856 Dr. Chevers drew attention to the question, and showed that the then law was insufficient to protect child-wives. He reverted to the question in his later edition of 1870, and recommended increase of the age of consent by an amendment of the Penal Code. A few years ago Mr. Dayaram Gidumal, of the Bombay Statutory Civil Service, brought the question more prominently before the public, exposed the defects in the present law, and made the same recommendation. Mr. Malabari circulated Mr. Dayaram's suggestion among the leaders of Native society in all parts of India, and collected a body of opinions in favour of the proposal, almost the only dissentient being a gentleman from Bengal. Mr. Malabari also elicited the private opinion of the late Sir Maxwell Melville in favour of a legal remedy, and published the fact. This led to the public meeting held in Bombay in 1886 to oppose any legislation whatever affecting reform of Hindu marriage customs. The pundits of Poona also took up the matter about the same time and waited on Lord Reay to protest against the proposal. The Social Reform Conference held in Bombay in December, 1889, voted a memorial to Government to raise the age of consent, and the same was forwarded in August last. This memorial, together with the rumour that the Phulmoni case was likely to lead to a revival of the proposal, were among the immediate causes of public meetings which were held in

Madras, Satara and Poona against the same. All that agitation for and against the proposed law occurred before the actual introduction of this Bill, and it proves conclusively that the Native public mind was quite prepared to see the Bill so introduced. The unfounded allegation that the measure was sprung upon the Native public exposes the ignorance of those who make it as to what is passing among the Native society around them.

"If opposition meetings have been held and protests have been sent to Government, history has only repeated itself once more, with this difference, that in the present instance all the latest civilized appliances, such as railways and telegraphs, and the annual gatherings between people of different provinces, have been utilized to give the agitation a somewhat improved semblance with the European type of such agitations. If in 1856 the widow marriage law was going to make us irreligious, and induce Hindu wives to murder their husbands in order that they might marry others according to their fancies, this Bill is going to destroy Hindu religion altogether and compel Hindu girls under twelve years of age to take to bad courses.

"I wish to explain my own views regarding the particular age-limit which the Bill fixes at twelve years. The history of this question, which I have tried to sketch briefly, shows the halting character of the proceedings of the Law Commissioners who drafted the Penal Code; and I fear that the facts disclosed in the reports of the recent inquiry and in other papers placed before us make it clear to me that the proposed limit is not entirely free from a similar fault. The Calcutta Public Health Society and other authorities consulted almost unanimously recommend that the age should be increased to fourteen or at least thirteen years. The petition from 1,600 women of India sent to Her Majesty the Queen-Empress in December last, as well as the fifty lady-doctors' petition to His Excellency the Viceroy, pray that the age may be increased to fourteen years. I very greatly regret that the age of fourteen, or at least thirteen years was not inserted in the Bill as introduced. I did not fail to discuss this point in the Select Committee, but after further consideration it appeared to me that to alter and increase the age-limit at a subsequent stage of the discussion, after the most unseasonable, vexatious and mischievous agitation which has been carried on against the Bill as it stands, might bear an appearance of resentment, however groundless, and that it was wiser and more dignified to err on the side of moderation to a fault, than to raise the age-limit now at the second stage of the discussion. I, therefore, preferred to yield to the general sense of the Select Committee and did not press my suggestion further.

" I have to perform one more duty before I relieve the Council from hearing any more from me on this most painful subject. About a fortnight ago I received a telegram from Mr. Mallappa Warad, the chairman of the meeting held at Sholapur in the Bombay Presidency, to protest against the Bill. In that telegram I am asked to represent the views of that meeting in this Council. I do not know what my countrymen who took part at that meeting expect me to do on their behalf beyond giving due consideration to their representation along with those received from other quarters. This was done by myself and by hon'ble members of the Select Committee. If they expect me to advocate their views simply because I happen to be a non-official Native member of this Council from Bombay, I am sorry to be unable to comply with their wishes, because I hold it to be my bounden duty to represent here only such views as may commend themselves to me as likely to serve the best interests of my country.

" With these observations, for the length of which I must apologize, I beg to support the Motion that the Bill as amended by the Select Committee be taken into consideration."

The Hon'ble MR. HUTCHINS said :—

" After the ample discussion which this Bill has undergone both in and out of Council, and especially in the lucid and powerful speech of the Hon'ble Mr. Evans to which we have just listened, I am much tempted to abstain from doing more than record a silent vote in its favour, more especially as it is quite impossible to enter into any argumentation about it without speaking very plainly regarding matters which it is more decorous to leave to be understood. There are, however, some points connected with it upon which Your Excellency, and perhaps the public also, will expect the Member in charge of the Home Department to express his opinion, and perhaps to offer some explanation. Besides, I think it due to my hon'ble and learned friend who has special charge of the Bill, and has now moved that it be taken into consideration, to make it clear that he is not alone responsible, but that, in common with my other colleagues, I have gone along with him throughout. And I wish, if possible, to convince the opponents of the measure that I myself have given candid and, as far as possible, sympathetic attention to all the arguments which they have advanced. I cannot hope to do this unless I deal with the matter in some detail, but I will try to be as little tedious as possible, and for the comfort of hon'ble members I may say at once

that I do not propose to refer to the texts of the Shastras except in a very general manner.

"The evil at which the Bill is directed was brought prominently to our notice by the case of Hari Maiti. On a perusal of the record in that case I had no doubt, and after full consideration of all that has been written and said on the other side I still have no doubt, that it is the bounden duty of the Legislature to interpose and to do what it can with propriety to put a stop to premature cohabitation. I do not wish to go into the details of that case. They are well known to every one here. There is, however, one material point which I must recall to the recollection of hon'ble members, and that is that the *post mortem* examination of the girl Phulmoni showed either that the private parts had undergone artificial enlargement with a view to early consummation, or that she had been subjected to repeated acts of intercourse. It was not possible to say which of the two alternatives was correct possibly both things had happened, but certainly one or the other, and it is hardly surprising that it should be so, when we have before us Sir Romesh Chunder Mitter's plain statement as to what is the general practice in Bengal, or at all events in this part of Bengal where Calcutta is situated. He says that girls of high caste are married between nine and eleven, and those of low castes still earlier, that they at once go to their husbands' houses for about a week, and pay similar occasional visits later on, that, whenever they do so, they sleep with their husbands. This, he adds significantly, is all that comes under the observation of the other members of the family He refuses to admit that what he persistently calls the *vice* of premature intercourse exists, and so I suppose he would have us believe that nothing of that kind takes place in the retirement of the husband's chamber. I regret that I cannot accept that suggestion It may possibly be true in some cases, and I only hope they are many; but it is opposed to all probability, and I may say to common sense I agree rather with the following significant passage in the long extract which my hon'ble friend has quoted in his minute from Mr J N Mukerji, whom most erroneously he seems to regard as an opponent of the Bill like himself:—'The protection of young girls from cruel treatment is as much a necessity as the protection of young men from a temptation of the most trying description.' It seems to me, my Lord, and I say it advisedly, that every person, man or woman, who does anything to encourage or promote the shutting up of a child-wife in such circumstances with an adult husband is an accessory before the fact to her violation. I think such persons are legally

liable for abetment, and I hope that, after the Bill becomes law, this may be brought home to them, if necessary, by the award of exemplary punishment.

"I have referred to two alternatives as presented to us by the case of Hari Maiti. Whichever we adopt, we have clearly presented to us an abominable state of things which cries loudly for a remedy; and the only remedy open to us sitting here is to convert this *vice* into a *crime*—to make punishable by law, within such limits as may appear proper, this practice which my hon'ble friend himself has described as pernicious, and which all men must confess to be repugnant to nature, to common morality, to humanity itself. What then are the proper limits? The Bill before us proposes the age of twelve. The Shastras themselves unanimously condemn cohabitation before twelve except in those few cases where the girl attains what they call puberty at an earlier age. It is on those exceptional instances that all the opposition to this measure has been based. Now, I am not prepared to deny that there may not possibly, in one or two of these exceptional cases, be some conscientious scruple about obeying the proposed law; and the question arises, are we justified in ignoring this microscopic minority in the interests of an overwhelming majority? On this point Mr. Evans has quoted some weighty words of Sir Barnes Peacock, but my Hindu friends may like to know how such difficulties are teated in England. They will hardly deny that the English law is reasonably tolerant of all religious opinions, and at all events of the peculiar prejudices held by any sect of Christians. *The Queen* v. *Downes* is a case in which the prisoner in breach of a Statute neglected to call in medical aid for his sick child, and summoned instead the elders of his Church to pray over the child, because he really and sincerely believed that it was impious to do more than leave the issue of its life or death to the arbitrament of the Almighty. The prisoner was nevertheless convicted of manslaughter. And on the same principle the British Legislature has not hesitated to make vaccination compulsory notwithstanding the fact that certain persons have somewhat similar scruples upon that subject.

"In regard to these exceptional instances, after what has been said already by the hon'ble and learned mover and other hon'ble members, I wish only to make two further observations. The first is that there must always be a doubt whether the first flow indicates real puberty. There are cases in which menstruation has occurred even in infancy, and in many instances there has been a considerable interval between its first appearance and its regular establishment. But, even assuming that the first flow is perfectly natural, it is no

proof of adequate development or maturity, and it is in the highest degree unlikely that such development can be attained before the age of twelve I therefore think twelve the very lowest age at which we can place the limit of absolute protection. To that extent at the least we are bound positively, and without any qualification whatever, to interdict the exercise of marital rights

"The remarks which I have just made have some bearing on another part of the case before us, namely, the suggestion that puberty should be adopted as the criterion rather than a limit of age. To a certain extent I sympathize with this view. Real and natural puberty would undoubtedly be a far better physiological test than any hard-and-fast age There are, however, insuperable objections to the magistracy investigating delicate questions of this description, and I am sure no one would press these objections more strongly than those who oppose the present Bill The condition too is one which is easily simulated, and which can be, and is, accelerated by the very evil which we are seeking to stop or by other unnatural practices I do not forget that among Hindus the attainment of puberty is usually attended with certain ceremonies and becomes a matter almost of public notoriety, but even this does not obviate the objections which I have just stated Besides, it must be remembered that we are not legislating for Hindus alone: the Penal Code has universal application

"It has been said that the exact age of a girl is rarely known, and there is doubtless some truth in this objection. But it is one which will gradually disappear as education spreads and the necessity for maintaining some proof of age for other purposes becomes impressed on the people at large This difficulty has not deterred the Legislature from laying down limits of age in regard to other matters, even in the criminal law, and in practice the Courts manage to arrive at fairly sound conclusions about age. The Rajputs of Jeypore are practical men, and they have not hesitated to prescribe an age for marriage. Of course the benefit of a real doubt is always given to an accused person, but in this matter I would most earnestly advise that husbands should give the full benefit of any uncertainty that may exist to their tender consorts This will go far to relieve both from all risk.

"But I understand that my hon'ble friend Sir Romesh Chunder Mitter now relies chiefly on the objection that the Bill will be useless. A conviction, he says, is impossible where no serious injury has resulted, while where such injury has been inflicted the case can be adequately met under the existing law. I

venture to deny both propositions. As to the first, it is conceivable that even where no injury has resulted the girl may tell the truth though she has not been much hurt ; nay that she may even herself complain. Many a girl would resent outrage more than the severest pain The moral offence is just as great even when it causes no immediate mischief In one of the numerous eloquent pamphlets which have been poured in upon us the writer conjured up a striking picture of what he called the spectre of a deserted wife. I must say that this struck me as a very cowardly suggestion. Because the wife has every inducement to suffer in silence, therefore, forsooth, we should do nothing to protect her! Fortunately the Legislature has not allowed this view to prevail in regard to other offences against a wife

"It may be granted that without the wife's evidence and in the face of the husband's denial it would be difficult to establish actual consummation, but we must consider the case of abettors as well as principals, and I may remind the Council that the Penal Code very properly provides for the punishment of an abettor although the offence abetted cannot be proved; nay, even when it is quite certain that such offence has not been committed. If my information is correct there will be plenty of witnesses able to establish abetment if they choose to come forward, and it is unlikely that all can be made to keep silence.

"As to my hon'ble friend's second proposition, he relies on the authority of Hari Maiti's case, and on an unreported decision which two other learned Judges, still in the High Court, were good enough to communicate to the Select Committee Now, Hari Maiti was not convicted either of culpable homicide or of voluntarily causing grevious hurt, though his ill-treatment unquestionably brought about his wife's death. That case, therefore, tells rather against my hon'ble friend's contention. Hari Maiti was merely convicted of a rash and negligent act, and he escaped with only a year's imprisonment. I cannot but think that if it was true, as the evidence seemed to indicate, that he had repeatedly had connection with his wife before that unfortunate night, no Judge would have convicted him even on the minor count of rashness. The jury did convict him, but a jury is not bound to give reasons which will stand hostile examination In the other case, the accused, Kali Keora, adopted a line of defence which altogether excluded any plea that there had been such preparation of the girl, or such previous acts of intercourse without serious consequences, as would preclude the imputation of either legal malice or culpable negligence. The learned Judges seem to have advisedly abstained from raising this question.

It is true that they imputed to the prisoner an intention to cause hurt, or rather such knowledge that hurt would probably result as is equivalent in law to an intention to cause it; but we must have regard to all the facts from which they drew this inference. Not only had the girl shown no signs of puberty whatever, but she was at most only very little above ten. In fact, the Court had some doubt whether she was not really below ten, though they gave the prisoner the benefit of it. It does not at all follow that they would have made the same assumption if the girl had been nearly twelve instead of only just ten. The very able and careful charge of Mr. Justice Wilson in Hari Maiti's case shows how uncertain the law is in such cases and on what delicate questions the guilt or innocence of the husband may turn. I entirely agree with what Sir Andrew Scoble said upon this point when he introduced the Bill. He put it to the Council whether a law which interposed all these difficulties, and which allows a full grown man to *violate with precaution* a child of twelve, could be considered sufficient, except from the ruffian's point of view I only wish I could adopt the opinion that the present law does afford adequate protection even against grievous hurt, for the point in which the Bill now before us is defective seems to me to be this, that it leaves girls between twelve and puberty in the much inferior security which the present law and the doubtful protection of the Hindu Shastras now afford to those above ten. The Council will remember that Sir Andrew Scoble has just mentioned a case from Hooghly in which the accused husband was fully discharged and the death of the child-wife described as an unfortunate accident which had happened during his exercise of his ordinary marital rights. In that case therefore the view taken by the Courts was exactly the opposite of that which my hon'ble friend has put forward.

"My Lord, a wish has been very generally expressed that we would refrain from characterizing as rape the offence now under consideration. I need hardly say that this suggestion received the earnest attention of the Select Committee. My hon'ble friend Sir Romesh Chunder relies on the opinion of Lord Macaulay and his colleagues who framed the first draft of the Indian Penal Code. That opinion, however, was overruled on further consideration, and for thirty years the offence has been known as rape. Why should we now change its designation merely because we are advancing the age of consent by two years? If the gravity of the act is considered, it is an offence which in my opinion deserves to be stigmatized by the most shameful name we can discover. And what after all is rape? It is *illegal* sexual intercourse—intercourse which is not merely illicit but contrary to law and punishable as an offence—intercourse to

which the female does not consent in fact, or by reason of immaturity does not give such consent as the law can recognize. I venture to think that the final revisers of our Penal Code were not wrong after all. It is true that a husband has certain marital rights, but here we expressly interdict his exercise of them. They are in abeyance, and his wife's person is declared sacred and inviolable until she attains a certain age.

"Then again exception has been taken to the punishment, and some have even gone so far as to contend that such indulgences should be punishable with fine only—in fact, that they should be a rich man's luxury. The last suggestion is of course out of the question. For the husband, if he alone had to be considered, I should not have greatly objected to a maximum term of imprisonment of seven years, but with the majority of the Select Committee I preferred, on the whole, to leave the present law untouched in this respect, and I still adhere to that opinion. If one of the worst features of rape when committed by a stranger is wanting in the case of a husband, there is on the other hand this aggravation, that the husband himself is the natural protector of his victim, and takes a most cowardly advantage of her dependence upon him. It is, however, a matter of very little moment what the maximum punishment may be, for the Courts have full discretion up to that limit. I understand it to be the general wish that the offence should continue to be cognizable only by a Court of Session; we may trust our Sessions Judges to pass proper sentences: if in any case they should fail to do so, the High Courts have full power of revision. We need be under no apprehension that a youthful husband who, under the encouragement of his elders, succumbs to strong temptation, will be too severely dealt with; but how those elders who encourage him may be treated is a very different matter. The punishment for abetment when it cannot be shown that the offence abetted has been committed is only one-fourth of that assigned for the principal offence. It is necessary therefore that the maximum punishment for rape by a husband should be four times what may be deemed an adequate sentence for a bad case of abetment. I may perhaps mention one reason why the maximum punishment should remain high from the point of view of the opponents of the Bill. Their fear is that it will lead to false complaints. Section 211 of the Penal Code provides a specially heavy sentence for false charges of an offence punishable, as rape is, with transportation or a long term of imprisonment; and it is usual and reasonable in meting out punishment for a false charge to have regard to the punishment which is provided for the offence charged, and of which the person accused has been wrongfully put in peril.

"Strong objections have been raised to the police and subordinate magistracy being permitted to intermeddle between husband and wife. I think, speaking generally, that the Magistrates are well worthy of our confidence, and I am not sure that the police have not been brought in here to some extent as a sort of stalking horse: it is the fashion in Bengal to run down the police, and I think the opponents of the Bill have at least made the most of a prevalent prejudice It is not clear why the action of the police should be more dangerous or less salutary in these cases than in the case of other offences. I am ready, however, to believe that there may be some ground for the objection, and out of deference to the general wish the Select Committee has recommended the utmost possible concession upon this point. Only District Magistrates are to be allowed to take cognizance of such offences, and when they find it necessary to depute a policeman for a local investigation they are forbidden to employ one below the rank of an inspector. I have only been able to agree to these clauses on the assumption that no such cases are likely to occur in provinces where the districts are large, and that even in Bengal they will be few and far between. It is obvious that such provisions must be merely experimental and cannot possibly be maintained if the cases should prove more numerous than is expected. I trust advantage will be taken by the people themselves of the period which must necessarily elapse before these clauses come under reconsideration to introduce such reforms as will make any extension of the jurisdiction wholly unnecessary.

"The hon'ble and learned mover has clearly shown that Magistrates have full power to take up *in camerâ* complaints such as we are considering, and that they have not power to compel a woman to submit her person to examination against her will. I need say no more on those points. I think too that the impossibility of excluding complaints by others than the child-wife herself, or her guardian, has been sufficiently expounded by previous speakers. The child-wife herself would be exposed to intimidation or further brutal treatment in order to prevent her from complaining or to induce her to compound if the offence were compoundable, as it must be if a complaint were made essential. And, as for her guardian, it is he who would generally be responsible for having put her into her husband's power; what chance would there be of his making a complaint when he would incur some risk of being prosecuted as an abettor? It is on this risk, my Lord, that I chiefly rely to prevent these children being sent to their husbands at all. It will certainly strengthen the hands of a father who desires to protect his daughter that he will be able to say that he cannot let her go without incurring grave peril to himself; and a similar process of reasoning may

perhaps operate on one who would not otherwise care to go against custom, and may compel him to fulfil what I cannot but regard as his bounden duty. Although I pass ~~them~~ briefly over these matters of procedure, I must not omit to mention that the working of the amended law will be watched both by the Home Department and by all Local Governments with the utmost care and vigilance. The present restriction of jurisdiction to District Magistrates and inspectors will indeed compel us to do this, and may be accepted as a sufficient guarantee that we regard the matter as of the utmost importance.

"One more question remains, and that perhaps is the most serious of all. It is said that our Bill does not go far enough, that even if we cannot give protection up to puberty we might at least prohibit early marriages. The Legislature certainly has power to do this, but it would involve an interference with religion, and with social customs not necessarily harmful, which I personally—and I believe that I am also expressing the sentiments of all my hon'ble colleagues—would be most reluctant to undertake. In our opinion, if I may speak for them as well as for myself, the people themselves should be left to weigh the possible advantages of early marriage against the obvious disadvantages; and if, in their judgment, the advantages preponderate, we do not at present see any safe or sufficient reason for prohibiting the constitution of the marital relation at any age which they may prefer. But it is a very different thing when we come to the exercise of marital rights. The conjugal relation in itself does a girl no harm, or at all events no such unmixed and obvious harm that the Legislature need take account of it; but it is our bounden duty to protect the weak against brutal outrage by the strong, even if all the Shastras unanimously enjoined such outrage and all the various castes in the country practised it. In this Bill, however, I am convinced that we carry the great bulk of the people with us, and I am also satisfied that it does not really affect anything which is essential in the Hindu religion. Were we to prohibit early marriage we should neither have the people with us, nor could we assert that we did not contravene their religion. Indeed, I do not even now understand how my hon'ble friend and others who hold similar views can reconcile their two positions. On the one hand, they insist that we should scrupulously respect certain texts in favour of a ceremony which, in its material part at all events, is observed only in Bengal, and even there is neglected by the very highest caste and repudiated by at least a large number of the most respectable and intelligent families. On the other, they invite us to set aside the Shastras in a much more vital matter, by ordering that no

Hindu father shall obey a clear injunction which is very generally regarded as binding.

"My Lord, I consider that it is not necessary, in the paramount interests of morality or humanity, that we should accept this invitation, and therefore I think that we have no right to do what we are invited to do. But, if our hands are to some extent tied, those of my hon'ble friend and other leaders of the people are free to penetrate to what they rightly regard as the root of the mischief. I would most earnestly back up Sir Andrew Scoble's appeal to my hon'ble friend and other influential Bengalis. Defective as they may think this Bill, and defective as in truth it is when judged by the standard which we would willingly adopt, in their hands it may be made a mighty instrument of reformation. It has already succeeded in directing public attention to this crying scandal. Instead of prophesying that it will be evaded, and by their prophecies encouraging that very determination to resist which they say they deplore, and doubtless many of them do sincerely deplore, let them seize this occasion to stir up their compatriots to eradicate the cause of all the evil. The Rajputs of Jeypore and other Rajputana States have shown them one way in which this may be done, for without sacrificing one jot or tittle of their religion they have laid down for their own guidance satisfactory canons regulating the age of marriage. Would that the leading men of Bengal could be persuaded to do the same! Or, if that is too much to ask at present, would that they would at least determine to do their utmost to put a stop to girls joining their husbands, not only until they are twelve, but until they are fully mature! Either reform would go far to make this Bill obsolete, and a dead-letter in the sense in which I should wish to see it a dead-letter. Either reform would go far to remove from this province, which claims to be the most cultured and most enlightened in India, the shameful reproach in which recent revelations have involved it in the eyes of all the civilized world."

The Hon'ble SIR GEORGE CHESNEY said:—

"The subject of debate has been already so ably and exhaustively discussed that there really remains little to be said, especially upon the technical points which have been argued; but I desire to offer a very few remarks upon one aspect of the case which appears worthy of consideration.

"In the first place, I think one point must have occurred to every one who has followed the course of the discussions whether within this Council or in

the Press, and that is the remarkable absence of unanimity of opinion among those concerned as to the effect of the measure which the Council is now asked to pass. The claim set up by the opponents of the measure is that it will constitute an interference with the religious practices of a very large and important section of the community. Now, this is not the first instance in history of a protest having been raised against what may be termed a religious persecution. But the protest in this case differs in character from any similar demonstration in this particular respect—of the want of unanimity attaching to it. In all the numerous instances of religious persecutions which have occurred in the past, whether in the case of forcible conversion of peoples and nations to Islam or forcible interference by one sect of Christians with the religious practices or beliefs of other sects of Christians, there never has been any question as to the fact that injury to the religion of the oppressed would be caused by the interference in each particular case. The fact that such persecution was suffered by the one class and inflicted by the other was never admitted as open to doubt either by the sufferers or persecutors; the fact was admitted; the plea raised by the dominant party was either that the act of oppression was done for their own pleasure, or that they did it for the good of those who were affected. Those have been the conditions common to all cases of so-called religious persecution. There has never been any want of unanimity among those affected as to what the consequences would be of the act against which they protested. Now, I need hardly observe that this particular criterion is altogether wanting in the present instance, and I think where the body of testimony is so strong among a numerous part, although they may not be the majority, of those affected, that the measure in question will not constitute any interference with religious customs; from this point of view the case of the opponents of the measure must be said to break down. But, in fact, I think, after the debate which has taken place here it could no longer be seriously pressed. That unanimity of opinion as to the tendency and effect of the measure, which is, I submit, a primary condition for establishing the case against it, is here alogether absent.

"Next, I think we may assume that the admission is certainly established, that the practice which it is now contemplated to put a stop to is often attended with cruelty. The argument of the apologists for leaving the law as it is is that the cruelty is justified on necessary religious grounds. That is a plea which is not now raised for the first time; in fact, it may be said that in almost all cases of religious persecution cruelty was admitted on the part of the persecutors, but it was claimed to be justified on religious grounds. My

Hindu friends within or without this Council, who are ranked among the opponents of the measure now about to be passed, have therefore at any rate this apology, that if they go wrong they do so in good company, namely, in the company of all majorities in past ages. For undoubtedly until recent times, throughout the history of man, cruelty on behalf of religion was regarded as a virtue. The only mistake of our friends is in being about three hundred years too late. It is but a short time ago in the history of the world that the Inquisition was set up on the shores of India, and while its horrors were being perpetrated on the Western Coast, it would no doubt have been consistent to claim that acts of religious cruelty should continue to be perpetrated on the east of the Peninsula. But cruelty in the name of religion is no longer tolerated in any civilised community, and in the present day the defenders of this custom stand at the bar of public opinion, and have the voice of all civilised humanity against them. The truth is that Hinduism, or this particular phase of Hinduism which claims that certain rites should be practised as a necessary portion of the Hindu religion, is now on its trial. The real question to be answered is whether this form of Hinduism is compatible with civilisation. I have myself no sort of doubt as to what the practical answer will be as given by the Hindus themselves. The arguments which have been brought forward in support of the practice we are now about to abolish are precisely of the same kind which might be and were advanced in favour of the practice of sati. When we are told, as we have been told in various petitions laid before the Government and before this Council, that a fatal blow will be struck at the Hindu religion if this measure be carried out, I would reply that the records of the past indicate clearly that Hinduism will be unaffected by the blow; for that it is just the remarkable flexibility of Hinduism, its power of adaptation to the changing circumstances of succeeding ages, which is the most powerful factor of its stability and endurance, and that Hinduism will survive unharmed the abolition of this practice, as it has survived and flourished notwithstanding the numerous changes which the practical religion of Hindus has undergone from generation to generation.

"And, as this is the last occasion I shall have of speaking in this Council, I would venture to make the prediction that the agitation which has taken place against the Bill now before us will come to an end on the passing of the measure. History shows that while there are certain classes of political movements as to which the agitation against change may be continued long after the change comes into effect, there are others again as to which, although the oppo-

sition may have been active while there was a chance of retarding the measure, it ceases as soon as the measure is carried out. I venture to predict that this particular case will be found to belong to the latter class, and that in a very short time the entire Hindu community will look back with surprise and regret at the opposition it received; that they will recognise the wisdom and justice which enforce the change, and also the advantage to themselves and to their reputation among the nations which will result from bringing their practical conduct into harmony with the dictates of humanity."

His Honour THE LIEUTENANT-GOVERNOR said:—

"My chief reason for thinking it necessary to address Your Excellency's Council to-day at so late an hour, and towards the close of so long a discussion, is that the Bill now before us specially concerns the Province of Bengal more than any other part of India, and that my silence on this occasion might be construed as an indication of my disapproval of the Bill. I wish to declare as distinctly as possible that I heartily approve the principle embodied in the Bill, and I believe that when the Bill has become law, and the agitation which now obscures men's minds has passed away, it will be recognised that the tendency of this measure makes for righteousness and for the physical and moral improvement of the people. I heartily share the hope which has been generally expressed that the law will seldom or never have to be put in force, but that what has been called its educative effect will stimulate the growth of a public opinion in favour of a more mature age for marriage than is now the custom in this part of India.

"It may be, however, that cases will be brought into the Courts, and it cannot be denied that there is a very widespread and genuine anxiety among the people, (1) lest an easy ear should be lent to malicious accusations, (2) lest the police should be employed in investigating these complaints, and should violate the secrecy of family life in so doing. For this reason, I hail the alteration which has been made in the Select Committee, by which only District Magistrates are empowered to take up complaints of this kind, and, if they employ police at all to investigate them, only inspectors of police can be so employed. District Magistrates are generally officers of high standing and experience, and inspectors of police are well paid and respectable officials who have a valuable position at stake, and are not likely to misbehave themselves. The protection thus afforded is a considerable one, and further than this the Legis-

lature has not thought it right to go. But still I notice that the public anxiety is not altogether allayed, and it is argued that sometimes through the exigencies of the public service very junior Civilians may have to be appointed for short periods to be Magistrates of districts, and that even the highest class of inspectors are not always trustworthy. I was glad to hear what my hon'ble friend Mr. Hutchins has just said as to the somewhat unreasonable fashion now prevalent of running down the police. I agree with him in thinking that there is not sufficient ground for the wave of hostile feeling to the police which is passing over the country; and I am by no means prepared to admit that they deserve all the evil said of them. Still the distrust does exist, and the practical administrator has to reckon with it. Now, no law can provide against exceptional cases of every kind, and it may often be the duty of the Executive Government to make arrangements to meet the difficulties which may arise out of such cases. In the present instance, it appears to me that the Bengal Government may with propriety make known to the District Officers its wishes on two points. One of these is that no action should be taken by any Magistrate except on really trustworthy information brought by persons who may reasonably be held to have knowledge of the fact they assert to have occurred: a prosecution should not be instituted on an information laid by any man out of the street who may be a private enemy or a retailer of gossip. The other point is that when the Magistrate of the district does decide to allow a prosecution to be instituted under this new section, it will be advisable for him to act under the power given by section 202 of the Criminal Procedure Code. Under that section, if any Magistrate . . . . . sees reason to distrust the truth of a complaint, he may, when the complainant has been examined, postpone the issue of a process for compelling the attendance of the person complained against, and either enquire into the case himself or direct a previous local investigation to be made by any officer subordinate to himself for the purpose of ascertaining the truth or falsehood of the complaint.

"In such circumstances I should advise him to entrust the investigation of the case preliminary to the issue of the process not to any police-officer, however high in rank, but to one of the Deputy Magistrates, who are Natives of the country and subordinate to himself. I am informed by those who have a right to speak on the subject that the people of Bengal have great and well-deserved confidence in the Subordinate Executive Service, and that if they are assured that the investigation into the facts will generally be left in

the hands of an experienced Deputy Magistrate, it will do a great deal to allay the alarm which is now so generally felt.

"Before concluding, I wish to say a word by way of tribute to the general good sense and moderation of the opinions which those noblemen and gentlemen of Bengal whom the Bengal Government consulted have contributed. We called on about forty persons altogether to assist us with their advice, and the answers we received form a decidedly valuable contribution to the literature of the subject, and contrast remarkably with the heated language used in public speeches and in many articles in the public Press. These replies were carefully analysed in the report which the Bengal Government submitted to the Government of India, and we held that both with reference to the numbers of the writers, and also to their social influence and intellectual importance, the weight of opinion was, on the whole, in favour of the Bill. But what struck me most was the strong sense of responsibility with which the subject was discussed and the evident desire to recognise the good intentions of Government and to assist it as far as possible in attaining its object. It is a very hopeful sign when the recognised leaders of society are possessed by such a feeling as to their relations to the Government. I share the feeling which has just been so well expressed by my friend Sir George Chesney, and I am sanguine that when the dust of this controversy has cleared away no bitterness will be left behind, and it will be admitted that this amendment of the law was, on the whole, sound and judicious."

His Excellency THE PRESIDENT said:—

"I might almost leave the case where it has been left by His Honour the Lieutenant-Governor. As, however, strong personal appeals have been again and again made to me, either to cause the Bill to be abandoned altogether, or to postpone its further consideration, I will say a few words to explain why it is that the Government of India cannot adopt either of these courses. It can, at any rate, scarcely be contended that during the months which have passed since this Bill was introduced into Council its provisions have not been adequately discussed. From that day until the present it has been criticised and examined with extraordinary ingenuity, and an amount of research and erudition has been brought to bear upon its consideration, so great, that we are justified in believing that little remains to be said, either for or against our proposal. I cannot therefore bring myself to share the opin-

ions of those who would have us postpone the passing of the Bill in order to give time for further discussion—time which would be used for the purpose of still further unsettling the public mind, and misrepresenting the scope and intention of the measure.

"The opposition which it has encountered has proceeded from three quarters. There is, in the first place, the general suspicion which has been occasioned in the public mind from the fact that the Government of India has determined to legislate upon a subject which, although it does not immediately affect the marriage law of any section of the community, has an indirect bearing upon the social usages of one of those sections. To the more ignorant portion of the public an appeal has been made upon the ground that its religion is threatened by the action of the Government of India; and this statement has probably been enough to cause uneasiness to many who are entirely unaware of the real scope of the Bill, who do not read the discussions which take place in Council, or even those which are to be found in the columns of the newspapers, and who are ready, upon the mere affirmation of the framers of hostile resolutions, or the conveners of public meetings, summoned under the circumstances so well described by the Hon'ble Mr. Nugent, to testify their alarm and their conviction that their spiritual welfare is seriously threatened. Of the opposition which we have encountered from this quarter, all that I have to say is that I hope and believe that it will be of a transient character, and that the Hindu community, and even the most unenlightened section of it, will in time find out that its religion is not endangered by what we are about to do. Although we cannot blame the credulous listeners who are led to believe assertions of this kind, made on apparently good authority, we have, I think, a right to complain of those who are reckless enough to disseminate such statements and, upon so slender a pretext, to fan the embers of a dangerous agitation. I earnestly trust that even those who are unable to support the Government measure will, at any rate, have the honesty to see that its objects and effects are not exaggerated or misrepresented, and that, if the Government is attacked, it is not attacked for doing what it has neither done nor intends to do.

"The main volume of the opposition with which the Bill has met has, however, originated not so much in sources of this kind as in the belief, apparently entertained by many devout Hindus, that the new law will involve a direct interference with a specific religious observance. We are told that the Hindu religion requires the consummation of marriage immediately

upon the attainment of puberty by the wife; that puberty is not unfrequently attained prior to the age of twelve; that, if in such cases the marriage is consummated, the person who so consummates it will find himself an offender against the Penal Code owing to the performance of an act which his religion requires him not to leave unperformed. Such interference on the part of the British Government is, we are told, in direct opposition to the terms of the Queen's Proclamation; and this argument has been largely, and I must say most unscrupulously, used for the purpose of discrediting the Bill and imputing a breach of faith to the Government which has introduced it. Now, with regard to this contention, let me say at once that no Government of India has yet admitted, and that no Government of India will, I hope, ever be found to admit, that the Queen's Proclamation, to which this appeal is made, is capable of any such interpretation as that which has been placed upon it by those who used this argument. If that interpretation is to cover the case now under discussion, we must read the Queen's Proclamation as a contract that, whenever the requirements of public morality, or of the public welfare, moral or material, are found to be in conflict with the alleged requirements of any of the various religions prevailing in this country, religion is to prevail and considerations affecting public health, public morality and the general comfort and convenience of the Queen's subjects are to become of no account. The contention is on the face of it a preposterous one Such a contract would have been absolutely retrograde and out of place in the great charter issued in 1858 by one of the most humane and enlightened sovereigns who has ever ruled over the nations of the earth.

"I will venture to say that, in the eyes of every reasonable man or woman, the pledges contained in the Queen's Proclamation must be read with a two-fold reservation, upon which the Government has always acted, and which was not specified in the letter of the contract simply because it had always been acted upon and was perfectly obvious and well understood. The first of these reservations is this, that in all cases where demands preferred in the name of religion would lead to practices inconsistent with individual safety and the public peace, and condemned by every system of law and morality in the world, it is religion, and not morality, which must give way. It has already been pointed out that this reservation has been invariably insisted upon, and examples have been adduced in which, from time to time, the Government of India has intervened in order to prohibit certain acts, which unquestionably had the sanction of religion,

upon the ground that those acts were opposed to the general interests of society. The precedents afforded by our legislation against infanticide, against the immolation of widows, and against the immunities enjoyed by Brahmins, have been appropriately cited in illustration of this argument. Every one of these enactments were, if we are to accept the narrow interpretation of the Queen's Proclamation, acts of 'interference with the religious belief or worship' of the Queen's subjects from which those in authority under the Queen were charged to abstain on pain of Her highest displeasure. Sir Andrew Scoble has very properly referred those who rely upon this construction of the Proclamation, and who hold that it entirely debars the Government of India from legislating in respect to any matters affecting the religions of the people of India, to the provisions of the Act under which our business is at this moment being conducted —I mean the Indian Councils Act of 1861, which is the statutory embodiment in precise terms of the general principles set forth in the Royal Proclamation. Now that Act, far from absolutely precluding the Government of India from dealing with matters affecting religion, expressly contemplates the possibility of such legislation becoming necessary, although it safeguards it from irresponsible initiation. The words of the 19th section show as clearly as possible that, subject to proper precautions, legislation such as that which is now taking place was contemplated by Her Majesty's advisers, who were responsible both for the Proclamation and for the Act from which I have just quoted. But I will quote, as embodying what I believe to have been invariably recognised as the principle applicable to such cases, the terms of the judgment of the Privy Council when the abolition of the practice of sati came before it upon appeal. The Council recommended that the petition should be dismissed for four reasons, of which the third ran as follows:—'Because the Regulation' (that is, the Regulation forbidding sati) 'cannot properly be regarded as a departure from the just and established principles of religious toleration, on the observance of which the stability of the British Government in India mainly depends; and because the rite is not prohibited as a religious act, but as a flagrant offence against society.' The framers of the judgment proceed to say that 'it admits of question whether the rite is sanctioned by the religious institutes of the Hindus; by many of the most learned Hindus of the present day it is regarded as absolutely sinful:' and it is added, in the fourth reason, that it was the duty of Government 'to prohibit a practice which so powerfully tended to deprave the national feeling and character, and which taught preverted religion to predominate over the best feelings of the heart.' The rite was therefere pronounced illegal, and its observance prohibited.

"The words which I have quoted appear to me to be singularly apposite in the present instance, where we are dealing with what may most appropriately be described as 'a flagrant offence against society,' and the reservation is one which should, in my opinion, be made in reference to all cases in which the sanctions of morality and those of religion are in direct conflict. I would, moreover, ask whether such a reservation is not especially necessary when the religion with which we have to deal is the Hindu religion. I trust that neither here nor elsewhere shall I allow myself to say a word which might sound in the ears of the Hindu subjects of Her Majesty disrespectful towards the faith which they profess. It is a faith of which some of the tenets are worthy of a place amongst the articles of the noblest and purest creeds professed by the most civilised nations of the earth. But there is probably no religion more cumbered by super-imposed traditions more hampered by accretions of doubtful value, more perplexing to its votaries owing to its fluctuating and elastic character. It is a religion which is co-extensive with the life—social, political and domestic—of those who profess it. Every act, every incident of the daily life of a Hindu, has its religious aspect. I believe I am right in saying that the Shastras lay down that whatever a man does should be done with a religious object. Let us give all credit to a religion which obtains so strong a hold upon those who profess it, and which so entirely pervades their existence. But the very fact that we are concerned with such a religion renders it doubly necessary for those who are responsible for the government of the country to be cautious how they allow themselves to admit that religion must be allowed to block the way whenever it can be shown that a religious sanction of some kind or another can be discovered for the practice which it is sought to control or to forbid. To say that everything which such a religion enjoins must be recognised as an insuperable barrier, to be on no account traversed by the course of legislation, would mean the complete and fatal paralysis of the law as a reforming agency. The question then which we have to decide is whether we are to postpone, or to abandon, a useful measure of reform, demanded in the interests of humanity, calculated to effect a material improvement in the Hindu race, and supported by a majority of the Hindu community, merely upon the ground that it is objected to by a minority of that community upon the strength of a religious canon of doubtful authority, a religious canon which rests upon sanctions so slight that its transgression can be atoned for by the payment of a nominal fine.

"What I have said seems to lead inevitably to the second of the two reserva-

tions of which I spoke a moment ago. It is this, that in all cases where there is a conflict between the interests of morality and those of religion, the Legislature is bound to distinguish, if it can, between essentials and non-essentials, between the great fundamental principles of the religion concerned and the subsidiary beliefs and accretionary dogmas which have accidentally grown up around them. In the case of the Hindu religion such a discrimination is especially needful, and one of the first questions which we have to ask ourselves is, assuming that the practice with which our proposed legislation will interfere is a practice supported by religious sanctions, whether those sanctions are of first-rate importance and absolutely obligatory, or whether they are of minor importance and binding only in a slight degree.

"Now, I venture to affirm that the discussion which has taken place has established beyond controversy that the particular religious observance which we are urged to respect is, in the first place, a local observance, and one far from being universally recognised by those who profess the Hindu faith. It is a practice which is, in the main, peculiar to the Province of Bengal, and which is followed only in a portion of that Province, and only by certain classes within that portion. It will not be contended that devout Hinduism is not to be found outside this restricted area, but the Hindus of other parts of India do not share the alarm with which this Bill is regarded in Bengal. In the next place, it is admitted that the religious sanctions by which the practice is supported are of the weakest kind. The elaborate statement recently published by Dr. Bhandárkar, of the Dekkhan College at Poona, who is admitted to be one of the highest extant authorities upon questions of Hindu religious law, makes it perfectly clear that the precepts upon which the practice in question rests may be regarded as permissive only. It is conceded on all hands that, under certain circumstances, the consummation of the marriage may lawfully be postponed, and that even where it is not lawfully postponed the omission of the necessary act is an offence which may be expiated by the slenderest and most insignificant penalties. It was stated a few days ago by Mr. Janerilal Umiashankar Yajnik, in the eloquent speech delivered by him at the meeting recently held at Bombay, that it might be said without exaggeration of the eighteen millions of the Hindu population to whom he was referring that the bulk of them not only did not perform the *Garbhadhan* ceremony, but even the name of it is not known to them. Look, again, at the evidence which we have received from His Highness the Maharaja of Jeypore with regard to the manner in which these questions are regarded by the Chiefs and Sardars of Rajputana, who are well described in

Rao Bahadur Kanti Chunder Mookerjee's admirable letter as 'rigid and orthodox Hindus,' and far from likely to break the laws of their religion without compunction. Look also at the outspoken utterances of such men as our hon'ble colleague Mr Nulkar, as Mr. Telang, as His Highness the Maharaja of Travancore, as His Highness the Maharaja of Vizianagram, as Mr. Justice Muttusami Aiyar of Madras, and, even in Bengal, of such men as His Highness the Maharaja of Bettiah, His Highness the Maharaja of Durbhunga, or, in Calcutta itself, as Raja Durga Churn Law, lately our colleague in the Legislative Council, as Babu P. C Mozoomdar, whose note upon the subject deserves the most attentive study, and as Dr. Rash Behari Ghose, the eminent pleader, who has stated that, within his knowledge, the *Garbhadhan* ceremony is admittedly not observed in many respectable Hindu families and is not unfrequently more honoured in the breach than in the observance. I cannot, in the face of the evidence of such men as these, accept, without a protest, the statement of our hon'ble colleague Sir Romesh Chunder Mitter, whose absence from the Council I deeply regret, that we are 'forcing this reform upon an unwilling people.' To them, and to many more who have raised their voices in support of the measure, I desire to offer a public acknowledgement of the service which they have rendered. I feel convinced that the time is not far off when their fellow citizens, without exception, will recognize that such men as these, rather than they who have so noisily, and so thoughtlessly, repeated the parrot cry 'our religion is in danger', are the true leaders of public opinion in this country.

"I will, however, not further pursue this branch of the subject, which has been fully dealt with by previous speakers. If we can say not only that the observance under discussion is far from being regarded by the majority of those who profess the Hindu religion as essential, but also that its practice is repugnant to common sense, abhorrent to modern civilization, debasing to those who adopt it and detrimental to the physical and moral welfare of the race, we may, I think, consider that we have placed it completely outside the category of those religious customs and observances on behalf of which the Queen's Proclamation may be invoked, and which are deserving of recognition and protection at the hands of the responsible lawgivers of British India.

"I will now pass for a moment to the third great objection which has been raised against the measure. It is the objection founded upon the anticipation that it will lead to inquisitorial action by the police, to prosecutions instituted

from vindictive motives, and to criminal investigations into family matters of the most domestic and private character. Of this objection I will say that, whatever may be our opinions with regard to some of the arguments which have been brought forward against the Bill, there can be no doubt as to the perfect sincerity with which this argument has been urged upon us. The apprehension, considering the conditions under which a great part of the population of this country lead their lives, is a perfectly natural one: we should, if we were situated as they are, probably entertain a similar apprehension ourselves. I would, however, in the first place, entreat the public to be cautious how in this or in any other case it allows itself to be too much influenced by arguments founded upon the possibility that a new law is likely to be abused in this manner. If the Government of India had been deterred from legislating whenever it could be told that its legislation would place in the hands of the police, or of private persons, a weapon which they might use in an improper manner, many of our most useful enactments would never have found their way into the Code. Now, as far as *bonâ fide* prosecutions are concerned, the assumption that there will be frequent prosecutions under the new section is obviously based on the anticipation that the law will be frequently broken. I am sanguine enough to believe that this expectation will not be fulfilled. It is an expectation upon which the frequently expressed belief that the new law will be a dead letter is a somewhat remarkable commentary. Our proposals, moreover, already command a very large measure of public support, and I do not doubt that in the end Native opinion, which has always ended by supporting the law in cases of this kind, will end by supporting it in this instance also. When once it has become established that that which is, I believe, already regarded by a majority of the people of this country as a moral offence, and which our hon'ble colleague Sir Romesh Chunder Mitter himself stigmatizes as a vice and as a pernicious custom, is also an offence which will render those who commit it, or those who abet it, liable to penal consequences, the offence will, I venture to think, become one of rare occurrence. I may observe in passing that it was mainly in deference to the apprehensions of which I have spoken that we found ourselves unable to accept the well-intentioned proposal that we should insert in the Bill, as an alternative for the limit of age which we have adopted, the attainment of puberty by the girl. This proposal, which seemed to us open to objection upon other grounds, was certainly open to criticism, for the reason that its adoption might have led to investigations far more inquisitorial, and far more repugnant to family sentiment, than any which are likely to take place under the Bill as it stands.

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"It is, however, contended that the tendency of the Bill will be to encourage proceedings which are not instituted *bonâ fide*, but from malicious motives, and in order to bring disgrace upon the family of the accused, and a moving picture has been drawn of the anguish and humiliation which such proceedings will occasion, of the outrage to which an innocent woman might be exposed before the question of fact could be satisfactorily disposed of, and of the public scandal which would be created if things which usually *sub lodice teguntur* are allowed to be openly discussed in a public Court of Justice. The argument is one which, I can assure the Council, the Government of India has most anxiously considered. We have, I think, shown our sense of the necessity of guarding against these risks by making the offence a non-cognizable one, and thereby increasing the difficulties in the way of vexatious prosecutions. We have also agreed to add to the measure a clause preventing all but District Magistrates from dealing with cases in which husband and wife are concerned, and precluding any police-officer below the rank of an inspector from making, or taking part in, the investigation, when one has been directed by the Magistrate.

"But it may be argued that these precautions will be of no avail. It will be said, 'The reputation of our families and the sanctity of our homes will still remain at the mercy of a dismissed servant, or an offended neighbour.' I cannot bring myself to share these gloomy anticipations, or to believe that false charges of this kind will be as common as we are asked to believe. The person who makes them will, in the first place, render himself liable to the most severe punishment. The very fact that the offence is to be punished by a heavy penalty increases, as the hon'ble member in charge of the Home Department has well pointed out, that to which the person falsely charging such an offence exposes himself. We should, moreover, remember that the false witness will have not only the law to reckon with. If the charge which he makes is odious, how odious will he be who invents such a charge, and how tremendous will be the penalty which he will pay by attracting to himself the indignation of the whole community to which he belongs! It is, however, not only to considerations of this kind that we must look for a safeguard against this danger. We have to remember that the person who seeks to prefer a charge of this sort must make out a *primâ facie* case, sufficient to satisfy a Magistrate of the highest position and respectability—a Magistrate who under existing procedure is bound to take into account the character of the person by whom the charge is preferred. Is it likely, under such circumstances, that a

trumped-up accusation will have the desired effect? Is it not much more likely that it will recoil upon the head of him who makes it?

"I do not, however, wish to press this argument too far, and I will assume that, in spite of every precaution, there will be cases—I do not for a moment believe that they will be common—in which such charges will be preferred from malice, or from other improper motives. Assuming this to be the case, all that I would ask the opponents of this Bill to do is to open in their minds what I might call a debtor and creditor account for and against this measure. Let them set upon one side the risks to which I have just referred, and which I believe to be infinitesimally small; and let them set upon the other side the certainty that this measure will remove a standing reproach from the Hindu community, and that it will afford to their wives and daughters a protection of which, after the ghastly disclosures which have taken place during the discussion of this measure,—disclosures of which but for their horror more would certainly have been heard,—we cannot for a moment doubt that they stand sorely in need. Which way ought the balance to incline? Will not those whose feelings are feelings of true patriotism reply—'We are content to run this risk, we are content to expose ourselves to the annoyance which once in a way the spite of a private enemy or a corrupt informer may occasion to us and to our families, for the sake of the good which this change in the law will bring to our sons, from whom it will remove a cruel temptation, to our daughters, whom it will rescue from the worst of outrages, and to the whole Hindu people, whom it will liberate from a disgraceful reproach.'

"I have already explained the reasons for which we have been unable to accept the suggestion, which has been made to us, that we should adandon our intention to raise the age of consent and deal at once with the whole question of the marriage law by invalidating all marriages contracted with a woman below the age of twelve. A change of the law in this direction is one which will, I trust, ultimately be demanded by the Hindu community itself. It is not one which, under existing circumstances, we are prepared to impose upon that community. So long as we adhere to our present proposal, we are, I believe, in an inexpugnable position No new departure is involved in the amendment of the law which we recommend. The existing law, of which the justice is admitted, specifies the age at which intercourse with a woman, whether with or without her consent, is an offence against that law. No complaint is made of this enactment,

nor is it likely that any one will be found bold enough to propose that the protection which is already afforded to these young children should be withdrawn from them. The necessity of an age limit being admitted, the only question which the Council has to decide is whether our proposal fixes that limit at the proper point. We contend that the point at which we propose to fix it accords, at all events, more closely with the physiological facts than any other. We have been pressed to adopt a higher limit, but we desire to keep on the safe side. We justify our proposal on the ground that the British law would fail to provide adequately for the safety of the children of this country if, while it protects them from all other kinds of ill-usage, it failed to protect them from a particular form of ill-usage infinitely more revolting, and infinitely more disastrous in its direct, as well as in its remoter, results, than any other form of ill-treatment to which they are liable.

"I have only one word to add. A hope has been expressed that when this Bill has become law the Government of India will closely watch its operation, with the object of ascertaining whether further safeguards are necessary in order to prevent its abuse. I gladly give the assurance for which we are asked. We shall cause the working of the measure to be watched with the utmost attention, and we shall be prepared, if the safeguards which we have already accepted should prove insufficient, to strengthen and add to them."

The Motion was put and agreed to.

The Hon'ble SIR ANDREW SCOBLE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

INDIAN FACTORIES ACT, 1881, AMENDMENT BILL.

The Hon'ble SIR ANDREW SCOBLE also moved that the Report of the Select Committee on the Bill to amend the Indian Factories Act, 1881, be taken into consideration. He said:—

"As two of the members of the Select Committee to which this Bill was referred have expressed the opinion that it has been so altered as to require republication, I think it desirable that I should state how it has come about that the Bill has attained its present form, and why it is not considered neces-

sary that it should be again referred to Local Governments and the representatives of the commercial and manufacturing interests for a further expression of opinion.

"When I introduced the Bill in January of last year, I stated that it was based upon enquiries which had been made by the Government of India for the purpose of ascertaining in what respects the Act of 1881 had been proved by experience to be defective, and what restrictions on the employment of labour could fairly be introduced with a due regard to the interests of the operatives themselves, and without unnecessary interference with the development of manufacturing industries in India. The proposals of the Bill had eight objects in view—

(1) to extend the operation of the Act to factories in which not less than twenty persons are employed;

(2) to raise the minimum age at which children may be employed in any factory from seven to nine years;

(3) to limit the hours of employment for women to eleven hours a day;

(4) to secure to women as well as to children proper intervals for food and rest during the day, and not less than four days holiday in each month;

(5) to secure a proper supply of water for the use of operatives;

(6) to ensure proper ventilation and cleanliness in factories;

(7) to prevent overcrowding likely to be injurious to health; and

(8) to give Local Governments greater power to obtain returns and make rules for the purpose of carrying out the provisions of the Act.

"One of the first representations made on the subject of the Bill was a petition forwarded to Your Excellency by the Hon'ble Nowrojee N. Wadia, and signed by about 17,000 operatives employed in spinning and weaving mills in the City of Bombay, in which it was prayed—

'that, inasmuch as it is necessary for the common interests of mill-owners and your petitioners alike that there ought to be a complete cessation of work every seventh day in a week, it should be enacted by law that factory hands be allowed one day of rest in a week. And, inasmuch as Sunday is universally admitted to be practically the most convenient day, Sunday might be declared by law so to be the day of weekly rest. At the

same time, having regard to the fact that in India there is a large number of Native holidays (13), the stoppage on these additional days with Sunday might entail needless hardship on employers and employés alike by tending to diminish their respective earnings. Your petitioners further beg to suggest that, as far as possible, whenever a Native holiday occurs in a week, then the Sunday following it should be considered a working day;

and, secondly, that in view of the want of uniformity and punctuality in the practice at present prevailing in the mills where they are employed with regard to the midday stoppage for taking meals and rest, your petitioners also consider it most desirable that a statutory provision be inserted in the proposed amending Act, making it compulsory on all factory owners to allow regularly and punctually midday rest for half an hour, (say) from 12 noon to 12-30 P.M.'

"These suggestions went considerably beyond the scope of the Bill, which was intended to provide intervals of rest and holidays for women and children, leaving male operatives at liberty to make their own arrangements with their employers; but they were too important to be disregarded, and the further progress of the Bill was suspended in order that full time might be given for their consideration, as well as for the consideration of objections which had been raised in various quarters to some of the original proposals of the Bill.

"In order to arrive at a clear understanding as to the views of the Indian operatives themselves, the Government of India came to the conclusion that it was desirable to appoint a Commission to make enquiry, in the centres of factory labour, into the various points of controversy. Of this Commission Dr. Lethbridge was appointed President, and with him were associated a number of Native gentlemen whose position and capacity, or whose connection with manufacturing industries, furnished a sufficient guarantee that the enquiry would be conducted thoroughly and impartially. The Report of the Commission was presented on the 12th November, 1890, and copies were at once circulated to Local Governments, Chambers of Commerce and other mercantile bodies, for their information and for any criticism they might desire to offer.

"The points upon which the Commissioners were desired to report were these:—

(1) Is the limitation of the hours of work for women to eleven in any one day proper and sufficient in view of the conditions under which factory labour is performed in India, and do the female operatives desire that the day's work should be limited to this amount, and, if not, to what amount?

(2) Should the law draw a distinction between young persons and adults, and, if so, the age of a child being fixed at from nine to twelve, what should be the definition of a young person, and what should be the hours of employment of this class?

(3) Is the limitation of the hours of work for children to nine in any one day proper and sufficient in view of the nature of the work on which children are employed in Indian factories and the conditions under which they have to perform that work?

(4) Does clause 5 of the Bill now before the Legislative Council sufficiently provide for holidays for women and children, and is any provision required prescribing an allowance of holidays for adult male operatives?

(5) Do the male operatives desire that a general working day, and, if so, of what length, should be fixed by law except in cases in which men work in shifts or sets, and, if this change is not desired by the operatives themselves, do the conditions under which they work demand that it should be adopted?

(6) Do the male operatives desire that there should be a compulsory stoppage of work at a fixed time of the day, and, if so, of what length, and should there be an exception in the case of men who work by shifts or sets? If the change is not desired by the operatives themselves, do conditions under which they work demand that there should be a compulsory stoppage of labour, and, if so, in what manner should it be provided for?

"The answers of the Commissioners to these questions are contained in their Report, which is in the hands of hon'ble members; and the conclusions at which they arrived have been accepted by the Government, and are embodied, with some modifications which I shall presently point out, in the amended Bill now under consideration. I think I may say that they have commanded general assent, as indeed they deserved to do from their intrinsic good sense and clear appreciation of the conditions under which factory labour in this country is conducted. I will endeavour to summarize them as briefly as possible.

"In the first place, they recommend that a weekly holiday should be secured by law to all operatives; that the day of rest should be Sunday, and that it should be a complete holiday: but that, in order to secure the observance of Indian festival holidays, employers should be allowed to work their factories, if they desired to do so, on the Sunday following such a holiday. Effect is given to this recommendation in section 5B of the amended Bill; but provisos have been introduced by which factories in which continuous working is unavoidable

or necessary may be exempted from the operation of the general rule. This exemption is in accordance with the resolutions of the Conference recently held at Berlin on the subject of factory labour.

"In the second place, they recommend that in all factories there should be a compulsory stoppage of work for a full half-hour in the middle of the day, and effect is given to this recommendation in section 5A of the amended Bill.

"With regard to children, they recommend that the limit of age should be from nine to fourteen years; that seven hours should be the extreme limit within which children should be employed; and that, if children are employed as half-timers, no fixed interval of rest should be required for them by law. The Bill adopts the first and second of these recommendations in sections 5 and 7; but, to prevent the possibility of overwork, an interval or intervals of rest amounting in the aggregate to at least half an hour is secured to every child actually employed for six hours in any factory on any one day.

"With regard to women, the Commissioners adopt the original proposal of the Bill that eleven hours is a proper and sufficient working day, though they consider that, if the hours of labour are so limited for women working with moving machinery, the effect may be to deprive them of employment. The amended Bill maintains the limitation of eleven hours actual work, but provides, in accordance with the recommendations of the Berlin Conference, that this period of work shall be broken by rests of a total duration of one-and-a-half hours at least, with exception for certain industries. This extends the day to 12½ hours, and covers the period from daylight to dusk during a great part of the year. It may be hoped, therefore, that the operation of the law will not be found to interfere with the employment of women, who, under present arrangements, find it possible to take frequent spells of rest though employed as full-timers. Section 6 of the Bill as amended embodies the opinion of the Select Committee on this point, and reserves to the Governor General in Council power to grant exemptions in special cases from the strict application of the rule.

"As regards both women and children, the Bill provides that they shall not as a general rule be employed at night. Very few factories in this country are worked with artificial light; but as regards children absolutely, and women usually, it seems desirable that they should be employed only within the period between daylight and dusk.

"I have now stated the chief of the new provisions which have been introduced into the amended Bill. It is true that in two respects—the securing

intervals of rest for women and children and the prohibition of night work (except under special conditions) for these two classes—the Bill goes somewhat beyond the recommendations of the Factory Commission; but I understand that no objection is raised by employers to these provisions, and they are so much in favour of the employed that I venture to think the passing of the Bill need not be delayed in order to obtain more formal approval of them.

"Turning now to the modifications which have been introduced into the Bill with respect to matters of which the Factory Commission did not take cognizance, I may remind the Council that the original proposal of the Bill was to extend the operation of the law to factories in which not less than twenty persons are employed. This proposal is strongly advocated by the Bombay Government, but is objected to by the Government of Bengal, which considers that while twenty is too low a number a hundred is too high. The Committee have accordingly fixed fifty as the general minimum, but in section 20 have given power to Local Governments to extend the operation of the Act to factories in which less than fifty but not less than twenty persons are simultaneously employed.

"It will be seen that I have given notice of some amendments to be introduced into the Bill as amended. These relate principally to two matters which were settled in the Select Committee, but which by an oversight were not incorporated in the revised draft. The first is that rules made under the Act by Local Governments are to be made 'subject to the control of the Governor General in Council;' and the second that only such returns are to be called for as are required for the effectual working of the Act Both these suggestions were made by the Bengal Chamber of Commerce, and are supported by excellent reasons.

"It has been urged upon the Government that the Bill is unnecessary, and that existing conditions are all that can be desired or required in the interests alike of employers and employed. I am quite ready to admit that factory labour in India—and I have visited many factories not only in the neighbourhood of Calcutta but in other parts of the country—is not subject to the same disadvantages which too frequently beset it in Europe; but we have to legislate not only for well-managed factories but for those which are badly managed, and the stress of competition has unquestionably had a tendency to make employers in some cases more attentive to their own interests than to those of their work-people. The duty of the Government is to secure for

factory workers here that their work shall be carried on with a proper regard to their health and safety, and so as not to overtax their physical capacity. Beyond this, the Bill does not go, and less would not in my humble judgment satisfy the exigencies of the case."

The Hon'ble MR. MACKAY said :—

"My Lord, the Bill now before Your Excellency's Council was introduced as long ago as January, 1890, and a Select Committee was then appointed to consider and report upon its provisions, but the services of that Committee were not called into requisition by the hon'ble and learned member in charge of the Bill until the other day.

"The Bill originally introduced into this Council was, I believe, based on the recommendations of the Bombay Factory Commission of 1884, but these, it is well known, did not go far enough to suit the people of Lancashire, who urged that Indian factory labour should be brought under rules suggested by a Conference held at Berlin at which India was not represented or, if she was represented, it was only in an indirect way by the British Delegate.

"Then to enquire into the representation made by the Bombay operatives we had Dr. Lethbridge's Commission of 1890 appointed, and the recommendations of that Commission, which are characterized by common sense and moderation, had to be considered.

"The result was that the Select Committee to which this Bill was referred had three sets of recommendations to guide them instead of the original one set, and the Bill now before Council is, therefore, in some respects different from the measure originally introduced.

"I will not take up the time of hon'ble members by recounting the provisions of the law as it at present stands, or by instituting a comparison between the provisions of the Bill now before us and that originally introduced; but although I did not deem it necessary to dissent from the Report of the Select Committee, or to join in the recommendation for delay made by two of my hon'ble colleagues, I must say that I consider the restrictions which will be placed both on employers and employed, if this Bill becomes law, are the utmost to which we should submit, and I sincerely hope that no attempt will be made to enhance them for many years to come.

"The Bill provides for children being excluded from factories altogether until they are nine years of age, and keeps them at practically half-time work until they are fourteen. The first of these provisions, I must confess, I see no objection to, and as regards the second, though it has been urged upon me that it goes too far, because in a tropical country such as India the human race arrives at maturity at a much earlier age than in temperate climes, and it may therefore often be a hardship to prevent a boy of thirteen from earning a full day's pay, still I did not think it necessary to press this point.

"As regards the restrictions which it is proposed to place upon women, I am glad the Government of India have agreed to an arrangement which will, I believe, prevent the weaker sex from being driven from factories by the stronger, while at the same time, by limiting the period of their labour to eleven hours a day, the possibility of an accusation that the factory laws of India permit women to be overworked will be removed. It would be disastrous to many poor women and widows who now earn good livelihoods in Indian mills if an Act were to be passed which would have the effect of driving them from factory labour, and the probable evil effects of any such measure are by no means pleasant to contemplate.

"It must be remembered that, with probably one-fourth part of the exertion demanded of her in an Indian mill, a woman can earn four times in a factory what she can earn in a field; and, as regards the relative hardships of the two conditions of labour, I feel sure if a Lancashire philanthropist had to choose between working on the roads under an April sun and tending a spinning-frame in the shelter of a factory, he would rapidly run from the road and make for the mill.

"As regards clause (*c*) of section 5B, I would like to say one word. This clause was introduced with the object of giving power to Local Governments to exclude from sub-section (*1*), section 5B, factories such as those which the Berlin Conference recommended should be excluded. I would have preferred to have had the classes of factories mentioned in the Bill, but it was explained that naming them might prove inconvenient, and that it was better to make the provision a general one. I would like to state, however, that I understand and hope that the sub-section will be applied to jute and cotton presses, silk filatures, sugar factories and refineries, the rice-mills of Arakan and Burma, printing-presses, paper-factories and bakeries. I would have been glad to have seen the word 'shall' used in this clause instead of 'may,' but it was said that this might

land the Government in the High Court if they by any chance failed to apply the clause; and, though I did not think it necessary to protect the Government from the consequences of failing to do their duty, I did not press the point because it was explained to me by the hon'ble and learned member in charge of the Bill that 'may' in such cases is always directory, and that for all practical purposes it really means 'shall'.

"My Lord, no inconsiderable uneasiness has prevailed in this country for the past twelve months in connection with the proposed fresh factory legislation for India. There has been what I might term a sense of insecurity caused by a feeling that there was a risk of the interests of India being sacrificed on the altar of English party politics, and that a measure might be forced on the Government of India which would be distinctly disadvantageous to the interests of the people of this country.

"It was remembered with apprehension that only a few years ago the import duties had been abolished to benefit the English manufacturer, and that they were shortly afterwards replaced by a direct tax upon income, entirely unsuited to the circumstances of this country, and it was feared that Lancashire influence and Oldham agitation might carry the day again. In these circumstances, the action of the Government of India in connection with this proposed factory legislation has been watched with no little anxiety; but, although the limit to which restrictions should go has certainly been reached in the Bill now before this Council, I am happy to say that I believe the measure on the whole will give general satisfaction throughout India, and at the same time it should effectually silence Lancashire for ever.

"I consider the Government of India have fought our battle with valour, and at the same time with discretion; and, while by the measure before us they have provided in every respect sufficiently for the protection of the worker, they have declined to hamper or trammel with restrictions unsuited to this country the infant industries of India, and I am therefore prepared to support the Bill."

The Hon'ble MR. NUGENT said —

"My Lord, the primary objects of the Bill now before this Council are, as I understand, the better regulation of the working of factories in British India and the improvement, where such is needed, of the conditions of work of the operatives. The Bill reported on by the Select Committee is not the Bill originally introduced by the Hon'ble Sir Andrew Scoble, forwarded to the Local

Governments for opinion, and referred to a Select Committee of this Council. It is practically a new measure, based partly on the original Bill, partly on proposals made by the Factory Commission appointed last year, and partly on the resolutions of the Berlin Conference. The draft Bill as thus framed in the Legislative Department last month and placed before the Select Committee on the 2nd instant, and as now altered in certain respects by the Select Committee, has not been reported upon by the various Local Governments and commercial bodies, and indeed, as far as I am aware, was not even seen by them before the Bill and the Report were published in the Gazette of the 7th instant. Their opinions were obtained on the original Bill as introduced some thirteen months ago, and on the Report of the Factory Commission; but this Bill goes in many respects beyond the original Bill, and in some beyond the proposals of the Commission. Having regard, then, to the importance of this measure as affecting extensive and valuable industries in which millions of capital have been sunk and many thousands of hands are employed, and bearing in mind the circumstance that the measure has been already on the stocks for nearly fourteen months, and that an additional delay of a very few weeks in the launching of it would not therefore presumably be of vital consequence, I am respectfully of opinion that before the Bill is further proceeded with and becomes law the views of the different Local Governments and commercial bodies should be ascertained as regards at least those provisions in it which are entirely novel, and concerning which they had no previous intimation. I cannot agree that those new provisions are unimportant. What exactly is their degree of importance, and to what precise extent they will affect, for good or for evil, various Indian industries I cannot tell. This is a point on which expert opinion is alone of material value. Nor, although in the abstract they may commend themselves as fair and reasonable to me or any other hon'ble member of this Council who, like myself, has not a practical personal knowledge of the economy of factory labour and management, does it follow that they may not really greatly hamper the satisfactory working of a factory, or interfere prejudicially with the interests of the operatives themselves, or certain classes of them. On this question, too, the views of experts would be of value. And, seeing how widely the circumstances of factories and factory labour differ, not only in the various Presidencies but also in different portions of the same Presidency or Province,—how, for instance, the circumstances in Calcutta are dissimilar from those which prevail in Bombay, and how again the circumstances in the City of Bombay differ from those which obtain in Gujarat and Khandesh,—it appears desirable that information should be procured as to the probable effect of the new provisions to which I allude before they are finally enacted. Arrangements which may suit and fit in with the Calcutta system may

prove impracticable in Bombay, and arrangements which could without inconvenience be introduced in Bombay may be found impossible in, say, Ahmedabad without completely revolutionising the scheme of factory labour there.

"The present Factory Act applies only to factories employing one hundred or more hands. Under this Bill all factories employing not less than fifty persons will be brought within the scope of the law, and it is left to the discretion of Local Governments to make the Act applicable to factories employing less than fifty but not less than twenty persons. The objection raised by some Local Governments to the compulsory application of the Act to all small factories employing only twenty hands or other limited number in excess of twenty is thus met. It can hardly be contended that in any circumstances or in any locality a factory employing from fifty to one hundred hands is too small a concern to need supervision and control under the Act. Indeed, these small concerns frequently stand in greater need of inspection and improvement than do the large factories. In Bombay it is considered most desirable that the Act should be applied to the little factories, such as flour and oil mills and cotton and wool cleaning factories, employing often only from twenty to thirty or forty persons, which are situated mainly in the native town, and are not unfrequently most defective in their sanitary arrangements, the fencing of the machinery and other respects.

"One of the most important alterations which it is proposed to effect in the existing law by the Bill under consideration is that whereby the minimum age of children who may be employed in factories is raised from seven to nine years. Under the present Act no child under the age of seven may be employed, and a child after attaining the age of twelve is, for the purposes of the Act, treated as being an adult. In the Bill it is proposed to raise the minimum age to nine, and to regard as children boys and girls between the ages of twelve and fourteen. This double modification in the age limits of child hands appears most advisable. To my mind there can be little doubt that a mere infant of only seven years of age is physically unfit to work for hours daily in a mill, light as the labour may be. The life he leads, confined for hours in a mill-room with its close atmosphere and incessant rattle of machinery, must at that early age stunt his growth and enfeeble his constitution. It is urged that if not employed in the mill and helping to earn his own living he would be strolling about the streets making mud-pies, and generally doing mischief, and at the same time be an unremunerative burden to his parents. The answer, I think, is that, like all other little girls and boys of seven or eight

years of age, the little Hindu or Muhammadan is much better employed in playing than in working. The labour of life will begin for him quite early enough if he commences his daily toil in a mill when he has reached the more mature age of nine, and is materially bigger and stronger than he was a year or two before. He may well be left to enjoy such dull pleasures as his childhood can afford until he is nine. Moreover, I believe that, even at present, in Bombay at least, few children under the age of nine are employed, as mill managers find by experience that little useful work can be obtained from such young children. At nine an Indian child is well capable of performing the easy work assigned to him, but at seven or eight he is not, and employment at such an early age is likely to prove detrimental to his health and growth. The proposed raising to fourteen of the line of delimitation between children and adults is, I think, a desirable step. Precocious as is in some respects the Indian child, I do not consider that at twelve his frame is so set up and his strength and powers of endurance are so established that he can without injury to himself and without strain on his constitution—a strain likely to manifest itself in premature old age—work the full time hours of an adult man. Whatever the law may have held, a boy or girl of twelve is *not* a grown man or woman. He or she is still a child, and should only be allowed to do the work of a child. When he reaches fourteen the case is different. Then he can do the work of a man in a mill just as he would do a man's work were he engaged in his own fields or any other occupation. This sudden alteration of the age limit of children from twelve to fourteen may, I fear, lead to hardships in some instances, as not a few persons between the ages of twelve and fourteen, now actually employed as adult hands and earning the wages of full grown adults, will find themselves thrown back into the category of children, with the result that both their hours of labour and their earnings will be seriously curtailed. This result seems, however, inevitable. It would hardly perhaps be possible to declare that all persons over twelve but under fourteen now actually employed in mills should be specially exempted from the operation of the proposed provision, and to rule that it should apply only to persons under twelve not now serving in factories or who may hereafter be employed therein. Fortunately, however, the number of persons affected by the change in the legal limit of age will not, I think, be very large, and the pecuniary loss even to them will be but temporary.

"The chief other additions to the existing law proposed in the Bill are the enforcement of absolute closure of all factories, save certain classes, on one day in seven, the restriction of the actual working hours of children to seven per diem, or in certain cases eight, the limitation of the actual working hours of

women to eleven per diem, except where a longer period of work is specially sanctioned by the Governor General in Council, the compulsory grant of intervals of rest to women and children, and also to men where the set or shift system is not in operation, the prohibition of the employment of children between 8 P.M. and 5 P.M., and a like prohibition in the case of women save where the shift system is maintained. The compulsory closure for one day in the week of all factories except those exempted for special reasons is, I think, a salutary measure. Mill hands, like other human beings, require, and are the better for, a day of rest; a cessation from toil is as beneficial to their health and spirits—and in the long run therefore to their pockets—as it is to persons engaged in other avocations. In Calcutta a weekly holiday is the custom, but in Bombay, which is perhaps more worldly and less richly endowed with sabbatical instincts and Scotch foremen and managers, it is the exception. But it is as necessary and as expedient in Bombay and other places as it is in Calcutta; and, as it will tend to check over-production, it will in the end prove as beneficial to the mill-owners as to the mill-operative. The power taken in the Bill to exempt certain classes of factories from the operation of the one day in seven closure clause will, I think, suffice to meet the strong and reasonable objections raised by the owners of sugar-refineries, certain descriptions of presses, silk-factories, &c., to the application of this clause to their industries. The provision made in the Bill for a midday stoppage of work for half an hour for all hands in a factory not conducted on the shift system is so obviously desirable that no comment on it seems necessary. Nor, I think, can any tenable objection be raised to the limit of seven hours, or as in the Bill in certain cases eight hours, of actual work fixed in the case of children. The proposed interval of rest of half an hour seems unnecessary, and is declared by the Factory Commission to be not needed. The insertion of a provision requiring this interval to be allowed will, I think, only serve to militate against the employment of children in factories, and is therefore disadvantageous rather than of advantage to them. The omission, now proposed, of the clause enabling children to work in shifts for eight hours is, I think, to be deprecated.

"The other proposed provisions I regard with greater doubt. That eleven hours of actual work ordinarily constitute a sufficient daily task for a woman is probably the case, and I believe that as a matter of fact few women in Indian cotton and jute mills work longer; but it seems questionable whether in the interests of the women themselves it is advisable to draw a hard-and-fast line limiting to a precise number of hours the time any woman may work in a day. A woman paid by the piece, that is, by results, may occasionally wish to work

beyond eleven hours, but under the proposed regulation this she would be unable to do. If, however, a line is to be drawn, and a female adult hand is not to be permitted to exercise her own discretion, and to be a free agent in disposing of her own labour, then eleven hours of daily actual work would appear to be a reasonable limit, very nearly in accord with actual practice in the great majority of instances. But in my opinion a much stronger objection exists to the proposed compulsory grant of intervals of rest, amounting in the aggregate to one-and-a-half hours per diem, to women actually employed for eleven hours. This goes beyond the proposal contained in the original Bill, aud also beyond the recommendations of the Factory Commission, and is founded on one of the resolutions of the Berlin Conference. I am aware that the Bombay Mill-owners' Association has expressed its willingness to accept it; but I am by no means sure that the Association has fully understood the question or realized what may be the result of this change in the law. It is true that at present, under the easy-going discipline which prevails in an Indian mill, women, and indeed all the operatives, are allowed to leave their work for a few minutes at a time whenever they have occasion either to take food, to smoke, to have a talk, to rest awhile, or for any other purpose, and their casual absences from their looms, their winding or their reeling probably amount in the aggregate to from an hour to an hour-and-a-half daily. The supervisors and managers do not object to these occasional absences if not too frequent and too protracted, and during her brief temporary absence the woman's work, if on a machine, is looked after by her mate. But it will be quite a different matter when the grant of prescribed intervals of rest at fixed times is insisted upon and the labour in the mill is hampered by the enforced absence of a considerable proportion of the female hands during the working hours for fifteen or twenty or thirty minutes at a time. Moreover, so long an aggregate interval of rest seems uncalled for. One hour daily is all that the original Bill proposed, and the Factory Commission reported that 'beyond the half hour in the middle of the day no other compulsory time for rest is required.' The one-and-a-half hours' rest is now apparently to be given in India because the Berlin Conference, dealing with the question of female labour in wholly different circumstances and in another Continent, deemed that female factory hands in Europe ought to be allowed that amount of rest daily. One result, I may point out, will be that in the Bombay Presidency at all events, and indeed in every part of India where artificial light is not used in factories,—and I believe it is only employed in Calcutta, and there only in some cotton-spinning mills,—during some of the winter months women will be unable to do eleven or even ten hours of actual work in the day. This measure therefore, as curtailing their earnings, as interfering

with their freedom of action and as necessitating the introduction of stricter discipline in mill-rooms, is likely to prove a source rather of harm than advantage to the persons it is nominally intended to benefit. The prohibition of the employment of children at night is clearly advisable for the due protection of their health, but I fail to perceive any adequate reason for preventing women from working in the evening and at night by artificial light, provided always that the number of hours for which they are actually worked in the twenty-four does not exceed the maximum number permissible by law. It is of course impossible for any woman to work all night and also all day. If she is engaged in a factory all day, she cannot labour also throughout the night; but, seeing that if given her option she probably would prefer during the hot season to work by night and sleep by day, I cannot understand why she should be precluded by law from acting according to her own inclinations and convenience. There is nothing inherently wrong or unhealthy in night work. As previously remarked, very few jute or cotton mills are worked after dark in India, but in cotton-presses and ginning-factories in the Mufassal, which are worked only for a few months in the year, work has often to be carried on day and night to enable it to be accomplished in time, and in such instances the employment of women at night is essential, if they are to be employed at all.

"I greatly fear, my Lord, that the conditions proposed to be attached by the Bill now before Council to the employment in factories of women and children, combined with the apprehension that this measure is only a prelude to the imposition of further restrictions, will eventually and at no distant date bring about a result much to be deprecated. That result is the exclusion of all women and nearly all children from employment in any factory—certainly from employment on moving machinery. This is not a view held by me alone. It is shared partially at least by the members of the Factory Commission, who state—'If the hours of labour are limited to eleven for women working with moving machinery, we are convinced that without any exception these operatives will be replaced by male adult operatives or half-time children. The law supposed to be passed for their benefit will inflict serious permanent injury on these skilled mill-hands, and deprive them of the chance of earning a living at these factories.' This seems to me a very grave matter. The substitution of men for women will probably cause the mill-owners some slight additional expense; but this is not a subject of very great consequence. But this new legislation will be a cause of much evil and suffering if—as I fear it is only too likely to do—it drives thousands of industrious and deserving Native women out of the mills, where for years they have been thriving and earning far higher wages than any

they could obtain by any other form of labour, and leaves them destitute and without occupation. Dwellers now in towns, they have learnt a new and forgotten their old trades ; they cannot dig ; to beg they are ashamed ; their livelihood will be lost ; and the means of their families, to which they so largely contributed by their labour, will be vastly reduced. Much misery and great distress will ensue, and a law nominally devised to be a blessing to the Indian female and child operatives will prove to them to be a curse. These only too probable results can hardly be regarded with any degree of satisfaction. The proposals contained in this Bill, to which the greatest objection can in my humble opinion be taken as being those most calculated to produce this disastrous result, are chiefly based on the resolutions of the Berlin Conference. I would wish to speak with all due respect of that Conference and the gentlemen who composed it, but I cannot refrain from pointing out that to the best of my belief there was no representative of India at the Conference, and, as far as I am aware, no gentleman who attended it had any practical knowledge of this country, its industries, and its conditions of labour. The conclusions of a body of experts conversant with European factory life, work and problems are naturally entitled to the greatest weight in all matters connected with factory administration in Europe ; but that they are of equal value when it comes to dealing with questions of factory economy and labour in Asia, where the circumstances differ in *toto cœlo* from those obtaining in Great Britain, France, Germany, Belgium and other European countries, I am not prepared to admit. No comparison can be instituted between the habits, modes of life, standards of comfort, physical and mental powers, and circumstances of existence of an English mill-hand and an Indian operative. They are in all respects utterly dissimilar. Nor, again, is an English factory, with its strict discipline, formal rules strictly enforced and carefully obeyed, fixed hours, and its less numerous but more skilled and highly trained operatives, to be treated as being on the same footing as an Indian mill with its lax and easy-going discipline, its absence of strict methods, its lighter labour, and its multitude of, for the most part, small-sized, half-clad and uneducated hands. The two stand on entirely different levels. It is also necessary to bear in mind the immense difference in the quality of English and that of Indian labour. An English factory-girl does the work which in India it requires two or three male or three female adult operatives to perform. A cotton-factory which in England would employ one hundred hands would in India require three hundred hands. Of the hands, 75 per cent. would in England be women ; in India the percentage of women would be below 60. Roughly speaking, therefore, an Indian female operative does about one-third of the amount of work which an English female operative performs, and the labour of the former, though lasting over a

large number of hours, is distinctly light. An idea would seem to prevail in some quarters in England that the Indian operatives are cruelly overworked and miserably underpaid creatures, the slaves practically of rapacious European, and still more heartless and extortionate Native, mill-owners. A more erroneous and unfounded theory than this it is impossible to conceive. The Indian mill-hands are well paid, well treated and moderately worked. Their work is light, pleasant and highly paid as compared with that of their less fortunate brethren employed as coolies, agricultural labourers, or on roads, railways or public works. The woman who in a mill can easily earn under shelter, in an airy, commodious building, in what for her is luxury, her six annas or upwards a day, and has what is practically permanent employment, is infinitely better off in every way than she would be in her native village toiling in the fields, at times in heavy rain, at others under a blazing sun, deeming herself lucky if she gained a few coppers by selling for an anna or two a heavy head load of grass or a bundle of firewood which it took her hours to collect, and which then she had perhaps to carry for miles to the nearest market town, or considering herself favoured by fortune if she secured occupation for a fortnight as a coolie on a road-making or road-repairing job, and was paid three annas for a long day spent in carrying baskets full of earth or metal. To women of her class—and they constitute a very large proportion of the female population of this country—employment in a mill is by far the best and most remunerative occupation open, and this fact they fully recognize. Great consequently is the competition to secure engagements in mills, and the supply of candidates for employment always largely exceeds the demand.

"The interests of the Indian operatives, their health and happiness, are, I think, sufficiently safeguarded; but we are also bound, I respectfully submit, to consider the interests and well-being of another and important class not represented on or before the Factory Commission, and that is the owners of factories who, with much enterprise, at no small risk and by the outlay of millions sterling, have created and fostered in this country new industries, have made immense additions to the wealth of India, have introduced fresh manufactures, established cotton, jute and wool mills and other factories at all large centres over this great Continent, and have provided profitable and remunerative occupation for the vast numbers of their hard-working, industrious and in the main at present prosperous and contented employés. They have succeeded: in some respects and in some branches they have driven their European competitors out of the field; and in my humble opinion it would be an unfair and an impolitic measure to handicap them too heavily because they have won the

race, and to impose directly or indirectly on them burdensome restrictions not demanded by the circumstances of labour in this country, to enable their rivals from across the sea to recover wholly or in part the trade which has passed away from them. The Indian mill-owners, I submit, possess as strong a claim to the favourable consideration and the protection of the Indian Government as does any other class of its subjects. They have deserved well of the republic, they have started and perfected new industries, they have supplied employment to thousands of persons who, owing to the increase of population, would otherwise have experienced serious difficulty in earning a livelihood, and, speaking as regards the Bombay Presidency, I may say that they have thus, in furnishing occupation for the surplus population of the coast districts and Gujarat, averted what might have been a grave agrarian question, and which may yet become one. I am thoroughly and heartily in favour of all measures which are or have been found to be really requisite for the due protection of the Indian operative from excessive demands on his health, strength and stamina. I would most strongly support the adoption of any steps having as their true aim and actual result the prevention of overworking of the Indian mill-hands. But we should not, I submit, go beyond the real necessities of the case and impose by legislation restrictions on labour in this country, not called for by the circumstances of that labour, not demanded by either the employers or employed, and deprecated by both. We should, I think, protect the Indian operative within all reasonable limits, but we should not protect out of existence him and the industry which is his livelihood, nor should the protection of the Indian mill-hand be converted into a device for the protection of the British manufacturer against the Indian mill-owner.

"True and disinterested philanthropy is a specially estimable virtue, but when we find the English manufacturer selecting as the objects for the exercise of his spirit of benevolence men of other race, creed and hue who happen at the same time to be the employés of that manufacturer's most dangerous and successful competitors, when we see him urging the introduction of measures for the supposed amelioration of the condition of those employés calculated seriously to affect the industry of his rivals, it is not perhaps entirely unnatural to feel some suspicion whether the philanthropy thus displayed is altogether genuine and wholly unselfish. But the Indian operative, though in happy ignorance of Latin and Greek, ancient history and mythology, is sufficiently shrewd and sagacious, I think, to distrust the gifts thus offered him by the Greeks.

"Those of us who in India converse freely with Natives and read attentively the Native Press cannot fail to observe that a belief obtains that, when the inter-

ests, commercial and other, of England clash with those of this country, the interests of India are subordinated to those of England. This belief is, I fear, rapidly spreading, being fostered and stimulated by writers in the Native papers and other persons in a position to influence the comparatively uneducated masses; and I cannot but think that this notion that India is not being justly dealt with by England when purely English interests are at stake may eventually prove a source of political danger. I do not for a moment say that this belief is well founded. What I do say is that it exists and is increasing, and I should extremely regret to see any measure adopted which might furnish even a colourable pretext for holding it to be true. In my humble opinion there can be no doubt whatever that legislative enactments ostensibly for the amelioration of the condition of factory operatives in India, but in reality hampering their employment and thus prejudicially affecting both them and the industries of this country, whether passed by the British Houses of Parliament or by Your Excellency's Council, would greatly encourage the belief to which I refer, and the confidence of the people of India in the impartiality and beneficence of the British Government would receive a severe shock if the legislation regarding Indian mills and factories were imagined to be dictated or thought to be inspired by the manufacturers and manufacturing classes of Lancashire and Yorkshire."

The Hon'ble MR. EVANS said:—

"It may be that on general principles the Hon'ble Mr. Nugent is right, that the Bill placed before the Select Committee on the 7th of March was so different from the former Bill and from the Report of either of the Commissions that it ought, under ordinary circumstances, to have been sent out for the report of the various Local Governments before being passed by this Council.

"But the circumstances are peculiar, and, as the Hon'ble Mr. Mackay, who is himself a good judge in the matter and has had opportunities of consulting not only the Calcutta mercantile community but merchants in other parts of India, is satisfied that, after the alteration made in the Select Committee, the Bill will not seriously hamper or injure either the operatives or the manufacturers, I agree with him that it is better to pass it than to keep the matter open longer.

"It is with great satisfaction that I have come to this conclusion.

"This Bill has created a very uneasy feeling in the country. It was rumoured that there was a strong and hostile force at work—a force not animated

by any desire to benefit either operatives or manufacturers. It was feared that this force had dominated the powers that be in England, and that the Government of India might possibly be in the position of a hypnotised patient acting on a suggestion.

"These fears were increased when it was found that the effect of one of the sections of the Bill laid before the Select Committee, which was borrowed direct from the Berlin Conference rules,—rules which were intended for Europeans only,—was to prevent women working at night in the tropics after 7 o'clock in the evening. This could not have emanated from an Indian source. It was absurd. People began to wonder whether the Commander-in-Chief would be allowed this year to commit the inhumanity of marching his soldiers at night in the hot weather when the brilliant light of a May sun was available.

"The Government of India, however, has justified its old traditions and the good opinion of its friends. It has accepted modifications calculated to render the Berlin rules more or less workable in the country, and, while protecting the operatives to the very furthest point which was possible without injuring them, has not been insensible to the interest of the manufacturers.

"There seemed every prospect at one time of very great friction over the Bill between Government and the mercantile community supported by public opinion, Native and European, throughout India. Such a struggle would have been a calamity to both parties, and not least to the Government.

"Though the Bill still contains matters that might well be dispensed with, I agree with the Hon'ble Mr. Mackay that it is best that it should be passed into law and the controversy closed; and I think both the Government and the mercantile community are to be congratulated on the result."

The Hon'ble MR. BLISS said:—

"I wish to explain my inability to entirely concur in the Report of the Select Committee on this Bill.

"Material modifications have been made in the Bill since it was introduced in January, 1890, by my hon'ble friend Sir Andrew Scoble. Many of these changes are in accord with the recommendations of the Indian Factory Commission which reported in November last, and have been generally approved. The Report of that Commission has, at all events, been before the Indian manufacturing public for a sufficient length of time for those interested to learn what was likely to be done, and to put forward such objections to the Commission's

proposals as they wished to be considered. Personally, I agree almost entirely with those of the Commission's recommendations which have been embodied in the Bill. Indeed, I wish that more of them had been adopted, for I regret that it has not been found possible to make some concession with regard to children over twelve years of age who are now working full time, or to exempt from the eleven hours' rule women who are now working for the same number of hours as the male operatives in certain mills, principally in Ahmedabad. I fear that the forebodings of the Commission with regard to these female operatives may be justified; and that a measure which is designed to benefit them may prove their ruin by causing mill-owners to dispense with their services and to employ in their stead male operatives, on the length of whose hours of labour there will be no legislative restriction. Probably these women, before the mills were started in which they are employed, were in the habit of working all day long in the sun as coolies carrying burdens or in agricultural field-work. I cannot therefore think that any harm would have been done by leaving them to work what hours they pleased at the mill-work to which they are accustomed. Their employment on good wages has, no doubt, given them new wants and a higher standard of comfort, and they will have no cause to thank this Council if the result of this legislation should be to deprive them of the chance of work, or to relegate them to a lower grade in the ranks of industry.

"But the Bill goes beyond the recommendation of the Indian Factory Commission in one particular which, it seems to me, may possibly be of very great importance. This is in the requirement that an interval or intervals of rest, amounting in the whole to one hour and a half in the full working day, shall be allowed to all female operatives. This is an entirely new provision, which was not considered by the Commission, and on which the persons interested have had no opportunity of expressing their views. It follows a recommendation of the Berlin Conference. But the protocols of the Berlin Conference have never been before the public of this country in such a way as to invite attention or to raise a suspicion that their essence would be incorporated in the factory law of India; nor would it spontaneously occur to any person who is acquainted with the conditions of Indian labour that rules and regulations which are applicable to European factories would necessarily be of advantage to operatives in this country. Take, for example, the Berlin rule that night work shall be prohibited in the case of women, to which my hon'ble friend Mr. Evans has drawn attention. The European idea of night is that it is a dark and cold and dreary time when every one who can had much better go to bed. The Indian

idea is that it is a cool and pleasant time, when all work, which does not require a better light than can be easily and cheaply afforded, can best be done.

"Now, with regard to the one-and-a-half hours' rest prescribed for women: one-half hour of this will be common to all persons employed in factories. There remains one hour, by which period the women's work-day will be shorter than the men's; and the question is, how far will this additional restriction upon female labour disorganize operations in factories and intensify the evil effects, predicted by the Indian Factory Commission, of the eleven-hours' rule, and drive women out of employment. This is a question which I am not competent to answer. I gather from what my hon'ble friend Mr. Mackay has said that the rule will not operate injuriously in Bengal. This is because factories in Bengal work by shifts. It is also the case that the Bombay Mill-owners Association has given its opinion that the rule will do no harm there. But the meaning of this may only be that the rule will not injure the mill-owners, because, as the Commission learned had been determined at Ahmedabad, they may have made arrangements to dispense with female tenders of moving machinery and to employ only men. I should like to have heard more of the grounds of this opinion and to have learned the views of the female operatives themselves as to the way in which the change would affect them. Then, again, important though the mills of Bengal and Bombay are, those Provinces are happily not the only homes in India of manufacturing industries. There are large factories in Cawnpore and, I believe, in the Punjab; and in Madras not a few mills have been started of recent years, which afford regular and well-paid employment to numbers of persons who previously earned a scanty and precarious livelihood as common labourers. What is the opinion in these places of this new rule? Of the factories in the Madras Presidency, one is at Tuticorin and one at Pápanassam in the Tinnevelly district, respectively six and seven days' post from Calcutta. What sort of chance have the proprietors and operatives of these distant factories had of considering this Bill, which was published in the Gazette of India on the 7th instant, and of submitting their views upon it? None whatever. Even if subscribers to the Gazette of India, they can hardly have had as much as one clear day in which to consider the effect of this new provision of law on the industry by which they earn their bread, and to make such representations to this Council as they thought necessary to guard their interests. I venture to think that it is very hard upon such persons that this Bill should have been taken up to-day, and that considering the length of time that has already elapsed since this Bill was introduced, and that it is not proposed to bring it into operation until the 1st of next January, some further time might

have been allowed to persons interested in which to think the subject out and address to the Council such objections as they thought fit.

"I regret, my Lord, to detain the Council further, but I wish also to draw attention to the general question of factory legislation in this country. It will not be denied that in this matter the impulse is not of indigenous origin, but comes from England; nor, I fear, am I guilty of an injustice to some of those who profess an anxiety to save the Indian operative from the oppressions of alien taskmasters, and from the effects of confinement and overwork, if I suggest that, in some cases, the motive that underlies, or at least accompanies, the impulse is the hope that restrictions imposed on Indian factory labour may tend to the profit of the mill-owners and operatives of Lancashire. No doubt, both in the case of such persons and in that of the persons who advocate Indian factory legislation on purely philanthropic grounds and with no thought of self-interest, there is the densest ignorance of the real conditions of the case. Both classes regard the Indian operative as almost a slave, forced by hunger to labour from dawn to sunset for a miserable pittance, the inhabitant of a squalid hovel, bare of furniture and of every household convenience. But in truth his ways are not as their ways. His standard of comparison is with the coolie or with the agricultural labourer, who works all day for a smaller—generally much smaller—wage, without protection from the sun in the hot weather or from the rain in the monsoon. He neither needs household furniture, nor would know what to do with it if he had it. All these things they do not understand. They forget, or do not know, that the Indian mill-hand gets double the pay, with no more work, of his brother who ploughs the ancestral fields; that while at work he takes things so easily, and rests so often, that an Indian mill employs nearly three times as many hands as an English mill for the same outturn of work; and that every two or three years he takes a good long holiday and rests himself in the distant village in which he was born. If they knew these things, I think their course might be different. They might see that the best thing they could do for the Indian operative would be to let him alone. But the English ignorance of all things Indian is extraordinary. It will be most difficult, and an affair of years, to bring home to the minds of people in England that the conditions of labour in this country are quite different from the conditions of labour in Europe; that the desire of the Indian operative is rather to work longer hours than shorter, if so be he can earn more money by doing so; that he is naturally, probably because of the climate, one of the least likely of mankind to injure his health by doing more work than is good for him; in short, that the conclusions arrived at at

Berlin in the interest of European operatives are by no means necessarily applicable in India. It was, therefore, with alarm that I read the terms of the question put in the House of Commons by Mr. Maclean, the member for Oldham, whether the provisions of this Bill would include as a minimum the rules adopted at the International Labour Conference of Berlin regarding age, hours of labour and hours of rest and refreshment. My Lord, I venture to think that this is a matter on which there should be a very clear understanding. The use of the words 'as a minimum' foreshadows an attempt to force upon the manufacturing industries of India restrictions which are absolutely unnecessary for the protection of the operatives and the effect of which must be the serious injury, if not the extinction, of the works to which they are applied. The present situation of India in this respect appears to me to be ominously like that of Ireland at the end of the seventeenth century. In both cases we have a subject agricultural country seeking to establish manufactures which will compete with the manufactures of the country which has subjected it. Let us hope that the parallel may not be carried further, and that England may not bring discredit upon herself by suppressing the cotton and jute industries of India as she suppressed the woollen industries of Ireland. So far as this Council can make its voice heard, I trust that it will give no uncertain sound, but will maintain, not that the rules of the Berlin Conference are to be enacted as a minimum, but that this Bill embodies the extreme restrictions which justice will permit to be imposed on the manufacturing industries of India."

The Hon'ble MR. NULKAR said:—

"Perhaps some explanation is due from me as to why I refrained from joining the three hon'ble members of the Select Committee who suggest republication of the Bill as now amended by that Committee before it was taken up for final consideration.

"It has been before this Council for over a year, and the unofficial public do not know the exact length of time during which it was undergoing the necessary process of departmental incubation. A strong belief is, however, entertained by the general public in India that the selfishness of the cotton-spinning electoral bodies of England have had a more potent voice in imposing this measure on India than any actually proved necessity for some at least of the stringent provisions it contains. I suppose that the English electors expect India to believe that their feelings of humanity are shocked when they imagine the extent of hardship to which the Indian factory hands may possibly be subjected by their employers. A speedy removal of these supposed grievances is

according to those philanthropists, their sole object in moving in the matter. They also possibly believe that they have given India a satisfactory proof of this disinterestedness of theirs on behalf of the poor of India by successfully working for the abolition of the cotton-duties a few years ago, and thereby compelling the Government of India to enhance the salt-duty to make up the financial deficit. They probably hold that the Indian masses ought to cover their nakedness to a larger extent than they care to do with cheaper material, and to meet any extra expense of it by willingly foregoing the necessary diminution of their daily allowance of salt. The masses, however, are an ungrateful lot. They would cry to be saved from such disinterested friends, and would rather prefer, barbarians as they are, to have cheaper salt and less clothing. Some hon'ble members may perhaps be in possession of facts to rebut this universal complaint, from an official point of view. A more satisfactory course would be to publish unreservedly the entire official correspondence, including telegrams, on the subject of this Bill, between India and England, and to let the public judge and solve their doubts on the subject—a subject which, I may assure the Council, has been the cause of not a little irritation of feeling throughout India.

"If the Indian factory hands require relief and protection, the Local Governments, under the general advice and control of the Supreme Government, are the best judges to devise proper remedies suited to local circumstances. Under such able advocates of the labouring classes as Mr. Lokhanday, who usefully presides over the Bombay Factory Hands Association, the voice of the factory hands is by no means unheard or uncared for by Local Governments, who have always shown every willingness to relieve their legitimate grievances, and can dispense with officious pressure from competing English capitalists.

"Without directing my criticism against any particular section of the Bill, which certainly contains several hair-splitting provisions, the actual necessity for each of which has not been clearly demonstrated, I must lodge a protest at the attempt which appears to have been made by Parliament through the India Office to force on India some of the conclusions of the Berlin Conference, which had exclusive reference to European conditions, and in arriving at which Indian interests had not been properly represented.

"I think that this is one of those subjects which ought to be left entirely to Local Governments to deal with, on general principles laid down for their guidance, without foreign intervention. I do not, however, deny that, so far as the public can judge, India owes a debt of gratitude to this Government for doing

its duty by manfully taking a firm stand to guard its industrial interests against unusual odds.

"The immediate consideration which weighed with me in not offering any objection to the passing of the Bill now was the reasonable apprehension that the fast approaching general election might possibly lead to a worse measure of interference with the infantile Indian industry; and I thought it wiser to pass the Bill in this session, and thereby save India from the possibility of a worse calamity, though the Bill contains provisions on which it would have been advantageous to have obtained further opinion of competent judges."

The Hon'ble MR. HUTCHINS said:—

"A good deal has been said by hon'ble members on the opposite side of the table as to the iniquity of interfering with Indian factories in the interests of English manufacturers and in deprecation of any Parliamentary action or resolution based on representations made by gentlemen who are either prejudiced by personal motives or at best have a very imperfect acquaintance with the actual state of things in this country. Now, I may say at once that I do not propose to offer any remarks in vindication of those who wish to impose injudicious and unnecessary restrictions upon Indian trade. Whether they are actuated by a desire to promote their own interests or those of their constituents, or by genuine though misplaced philanthropy, their endeavours can only be described as mischievous. To that extent, my Lord, I have a great deal of sympathy with my hon'ble friends, and I trust that this discussion may not be without effect in checking the mischief at which their remarks are aimed. But what I would venture to contend is that, however reasonable and true those remarks may be in the abstract, they are hardly pertinent to the only question which is now before us, namely, whether the Bill now on the table should be taken into consideration with a view to its being amended and passed. I confidently assert that the Government of India would never consent to promote a Bill which would involve the sacrifice of the true interests of Indian manufactures, or of the persons engaged in those industries, whether as mill-owners or operatives. Our sole desire is to do what is best for India, and quite independently of any outside pressure we consider that this Bill is in itself good for India. We have long considered it necessary that the Factory Act should be amended in several respects, and having once taken its amendment in hand our aim has been to provide a law of a simple and easily intelligible character, which will secure adequate protection for women and children according to the most approved standards, while at the same time it will do something for the ameliora-

tion of the conditions of factory labour in general. The Secretary of State also holds the same views. He has repeatedly asserted that the health of women and children, and the safety of operatives generally, must be the sole basis of all restrictive legislation, and that the question of the protection of English manufacturers against their Indian competitors cannot be allowed to enter into the matter at all. My Lord, I contend on that simple principle alone that this Bill is one which ought to be passed, and I venture to think that my hon'ble friends' remarks are only pertinent as showing that it is likely to be examined by hostile critics. It is not for that reason however that I ask them to pass it, but because it is in itself a fair and reasonable measure, because it will go far to put factories on a satisfactory footing, and because, if it may not have absolute finality, it is likely at least to endure for several years to come.

"A good deal has been said about the Berlin Conference and the inapplicability of its resolutions to this country, where the wants and conditions of the labourers differ very widely from those of European operatives, where the work is unquestionably much less severe, and where the struggle between capital and labour can hardly be said to have commenced, or at all events has not reached an acute stage. I grant at once that the Conference was not authorized to pass resolutions which should apply to India, and that their conclusions do not in any way bind us. I grant too that the members of that Conference knew nothing, or very little, of the real conditions of India. There is, however, one thing that they certainly did know something of, and that is the number of hours of work which women and children can bear without immediate or ultimate injury, and the intervals of rest necessary to enable them to endure such labour. On these points, making a slight allowance for earlier maturity, there cannot be any very great difference between Natives of India and Natives of European countries, and the Berlin resolutions seem therefore to be entitled to great weight. It is true that work in Indian mills is less severe, but surely the main reason why it is less severe is that spells of rest are freely taken. There is, however, no essential distinction between voluntary intervals and intervals secured by Statute. The point is that, voluntary or involuntary, they are necessary to health. The Hon'ble Messrs. Bliss and Nugent have both pointed out that Native women often work all day in the fields or on other exhausting labour; but they do not do this every day, nor are they liable to fines or other penalty for absenting themselves, as is the rule in many factories. While then I would not recommend that any of the resolutions should be literally or indiscriminately followed in every respect, I do think that the gentlemen who met at Berlin are entitled to our gratitude for having given us some sort of a standard by which we can frame a

sound enactment which may be expected to stand hostile criticism and to have some measure of permanency.

"Coming now to the specific provisions of the Bill, I wish first to express my gratification that it has secured the support of the Hon'ble Mr. Mackay. I can truly say that his practical knowledge was invaluable to the Select Committee, and but for his moderation and good sense we should hardly have been able to report a Bill so generally satisfactory as I claim this to be. With regard to what my hon'ble friend has said about the age of thirteen, I submit that the recent Commission has given very excellent reasons, on the assumption that there must be a hard-and-fast line at which a child will at one bound step into the ranks of adults, for not fixing that age below fourteen.

"The Hon'ble Mr. Evans has also agreed that it is better to pass the Bill as it stands.

"The Hon'ble Mr. Nugent signed the Report in token of his personal approval of the Bill as it stands. He stated, however, that in his opinion it ought not to be passed 'until the various Local Governments and commercial and manufacturing bodies had been allowed a further opportunity of expressing their views concerning the new and important provisions embodied in it.' He has expressed himself as still favourable to nearly all our amendments of the present law, but he seems now to entertain serious doubts on two or three points. He has not proposed any amendments on his own account.

"The Hon'ble Mr. Bliss also signed the Report subject to the same single reservation. I gather from his speech that he is still prepared on the whole to accept the Bill, though he entertains some slight misgivings as to the effect of some of the provisions.

"The Hon'ble Mr. Nulkar has raised no objection to the Bill being proceeded with.

"My Lord, I hardly expected to have to defend any of our specific recommendations against the criticisms of any of those gentlemen who had signed the Report. Nevertheless I welcome this modified form of opposition, because it gives me occasion to go somewhat minutely into those parts of the Bill upon which the public will probably wish for some explanation. What then are the provisions to which exception has been taken? I gather from what has been said that there are only three upon which any stress is laid.

"The first is the provision that neither woman nor child shall work in a factory between 8 at night and 5 in the morning. No objection is made to the particular hours, but I gather that at least two hon'ble members would wish women to be perfectly free to work all night by artificial light. Now, as a matter of fact, if my information is correct and if I have not got confused over the enormous mass of reports already received to which two of my hon'ble friends are so anxious to add yet a further instalment, no children now work by artificial light, and I think most of us will agree that it is better not to allow them to commence the practice. Our Commissioners certainly seemed to think so, for at page 7 of their Report they refer with apparent approval to the probability that children would be prohibited from working by artificial light. It thus appears that the matter *has* to some extent been suggested to Local Governments, though they have not chosen to notice it. I think too that no women work at night except in a very few factories managed on the shift system, and we have made an express exception in favour of places where that system is adopted. In the factories in question I understand that the work must go on continuously day and night, and the hours of labour are far below our maximum; I believe they do not exceed eight. It is not alleged that either the Madras or the Bombay Government, or indeed any one else, has either by letter or telegram made any objection to this section of the Bill, although my hon'ble friends' dissent, or qualified assent, must certainly have attracted the attention of their respective Governments. It is true that the Gazette of India could not reach such a place as Tuticorin, referred to by the Hon'ble Mr. Bliss, under seven or eight days, but the main provisions of this Bill were telegraphed all over the country immediately after its publication.

"Then there are the provisions for the protection of women. The first remark which I have to make here is that the Bill introduced fifteen months ago fixed the maximum hours of labour for women, as now, at eleven, and provided that they should have rest for at least an hour. These points had been determined long before the appointment of Dr. Lethbridge's Commission and long even before the Berlin Conference. They cannot therefore be said to be novel. And then let us see who are the women affected by them. They work principally in the jute and cotton mills. But the jute-mills are worked by shifts, and under the shift system not only are the hours of labour less than eleven, but there can be no difficulty in arranging an intermediate rest. Of the female cotton operatives, as many as 80 per cent. are not employed with moving machinery, and can therefore choose their own hours. These, as the Commissioners testify, 'can and do take the necessary rests.' What remain are the 20 per cent. em-

ployed with machinery in cotton-mills and perhaps a somewhat similar percentage in a very few less important industries.

"Now, the limit of eleven hours has been confirmed by the Report of the Commissioners, and there has been such a consensus of opinion with regard to it that I may take it as unanimously agreed to. The only dissentients are such irreconcilables as the Calcutta Trades Association, which declares it to be a 'fatal error in any way to restrict the wage-earning capacity of a family.' If that doctrine is correct, I need hardly say that factory legislation throughout the world has been a mistake from first to last. In supporting this limit it is true that the Commissioners, or a majority of them, made one reservation. They feared it might lead to the Ahmedabad workwomen being summarily discarded, and they therefore wished Government to exempt those women individually as well as others similarly situated. Now, they based this proposal on a saving clause adopted at the Berlin Conference upon the motion of the Italian Delegate, and they make the following quotation from that Delegate's speech:—

'If the restrictions proposed for limiting the employment of women in different *industries* are too absolute, a result will be reached entirely opposed to that which is desired, and, instead of bettering the condition of numerous classes, a very serious sacrifice will be imposed on them.'

"Ther esolution carried was that exception be allowed for certain *industries*, and that is the principle adopted in our Bill, as will be further emphasized in one of the amendments which the hon'ble member in charge is about to propose. I can understand an exception in favour of certain classes of work which are not exhausting and yet must be fairly continuous, but I do not understand how we could logically refuse to protect individuals simply because they have not been protected heretofore. This remark I think meets the case of those children whom the Hon'ble Mr. Bliss seems to wish to exempt. I would recall to his recollection that the Select Committee considered the point and reluctantly but unanimously decided that individual exception could not be permitted.

'Next, as to the intervals of rest. The Bill in its present shape has raised the aggregate period from 1 to 1½ hours. This question of these intervals, I may observe, was not referred to the Commission at all. We regarded that as settled, as in our opinion it stands to reason that no woman should be allowed to work as much as eleven hours day after day without intervals of some considerable duration. The one hour's break has been before Local Governments for a long time,—more than a year; but I admit that the enlarged proposal is novel. I think,

however, that it may be supported on many grounds, and I still adhere to the opinion that there is no real need for a further reference as to the extra half hour. That it is the standard adopted by the Berlin Conference is perhaps a small matter: we are not bound to take their estimate if we do not find it a reasonable one for India. But let us see why our own Commissioners declined to recommend any intervals of rest—a point upon which, as I have said, they were never consulted. They seem to have had two reasons. At page 3 they argue from the case of children that, outside the shift system, hands could only be employed in one or other of two classes, either as full-timers or as half-timers. They also referred to the Ahmedabad operatives, of whom I shall have something to say presently. Now, the case of children is really very different from that which we are considering. Their hours were limited to nine, which is as it were just half way between full time and half time. I can understand such a period as that leading to many practical inconveniences. But our proposal for women was eleven hours of work with one for rest, or very nearly full time; and obviously the nearer we can bring their hours up to full time the more likely they are to be continued in employment. Now, as Sir Andrew Scoble has shown, 11 hours of work plus 1½ of rest, or 12½ hours in all, is as nearly as possible equivalent to a full average working day. Ordinarily speaking, the women employed with moving machinery —and we need not consider any others—can come with the men at daylight and go with the men at dusk; and all that will be necessary will be to make some arrangement by which in rotation or otherwise they can take their appointed rests.

"I pass on now to the case of the Ahmedabad workwomen whom the Commissioners thought would probably be dismissed. They base this apprehension, it must be noted, not on the proposal to give intervals of rest, but on the fact that the hours of actual employment are to be limited to eleven. But I think I have made it clear that this limitation is almost universally accepted, and I have endeavoured to show further that the 1½ hours of rest, by bringing up the whole employment to what I may roughly describe as full time, is likely to better these women's chances of being kept on. At all events, it will not diminish those chances, as Dr. Lethbridge himself has assured the Government of India. The Commissioners describe the Ahmedabad system as follows:—

'Each machine has a woman and a boy or man to look after it. * * * With two operatives working on one machine it is nearly always possible for each of them to take frequent spells of rest.'

"What then is there to prevent the woman's joriwala or work-fellow from taking charge of the machine during her appointed periods of rest? He

does so already at the odd times that she chooses to go out or take a spell of rest: how will the condition be changed by the simple fact that such intervals are arranged beforehand and notified in the work-room? I had the advantage of discussing this subject with Dr. Lethbridge some weeks ago, before the Select Committee met, and I certainly came to the conclusion—and my hon'ble colleague Sir Andrew Scoble, who was present, shared my conclusion—that there was very little chance of the threatened dismissal of these women being really carried into execution. I am glad to find now that this seems to be the view also of so excellent an authority as the Hon'ble Mr. Mackay.

"The Report (section 62) describes the employer, Mr. Rungchorelal Chotoolall, as a very philanthropic gentleman, but this of course is a matter of business, and I rely on his self-interest rather than his philanthropy. These women were described to me as well trained and exceedingly useful. If so, I can conceive no possible reason why they should be turned adrift simply because their hours of relaxation have to be fixed beforehand. As a matter of fact they will in relation to the men be exactly in the same position as the original Bill would have placed them, for the extra half hour has been given to male and female operatives alike.

"And what I have been saying about Ahmedabad applies almost as strongly to other factories also. Employers are described as '*generally* liberal' about spells of rest, and not only women but men also 'go out frequently for five or ten minutes at a time.' Allowing half an hour at noon, when the machinery will be stopped, the hours proposed in this Bill will give a woman six hours before noon and six in the afternoon, each spell including half an hour of rest, which works out to just five minutes in each hour. I understand both from the Hon'ble Mr. Mackay and from the Commission's Report that this is about what is in practice allowed already in well-conducted establishments. Of course we are not legislating for such mills: we should be only too glad to leave them alone: the reason why we have to frame a law is to control the worse class of factories, where the employer is neither liberal nor considerate. In the good mills therefore we shall merely be maintaining the actual practice, while we shall compel the others to work up to the same reasonable standard. It has been said that the women themselves do not desire this, and certainly most of the witnesses seem to have been more impressed with a fear that they would be discharged than by any hope that their position might possibly be ameliorated. But Mr. Lokhanday, the President of the Bombay Mill Hands Association, did earnestly beg for this boon on their

behalf. His demand, it is true, was for one hour only, but this was calculated on a working day of ten hours instead of eleven.

"Finally my hon'ble friend Mr. Mackay has informed us that both the Calcutta and the Bombay mill-owners, on whose behalf Mr. Nugent has expended so much eloquence, accept our proposal, and, as I have said in connection with the question of night work, no objection has been sent in against it. I well remember that in the Committee my hon'ble friend Mr. Nugent, the most ardent of our opponents upon this point, emphatically stated his own opinion to be that 1½ hours was the proper time to allow, and I think this was the view taken by every other member of the Committee. On the whole therefore I cannot see that there is any serious disagreement upon this point or any necessity for requiring further reports.

"The third matter is a cognate one, namely, the hours of work and rest proposed for children. The question depends on exactly the same considerations as those already discussed with regard to women. I may therefore deal with it somewhat more briefly. There is a consensus of opinion that children should be half-timers: the novel point, if any, is that they should have half an hour's rest when their work extends to six hours. I do not admit that this is really novel, for the Act now in force gives an hour's rest to nine hours' work, which if we maintained the same proportion would give forty minutes instead of thirty for six hours' labour. But apart from that, just as it is generally conceded that no woman ought to be allowed to work eleven hours at a stretch, so I think it will be admitted that a child should not exceed six hours continuously. Where children get rests now—and I understand the argument to be that they do get them in all well regulated establishments—there ought to be no difficulty in so adjusting the work that they shall be able to relax in rotation or otherwise for some stated intervals. The Commission do not question the desirability of some such provision, but they seem to apprehend that such intervals cannot be given where there is moving machinery. The answer to this seems to be that such rests are taken even now as a matter of practice: the Report itself show that there are extra hands employed, and that at the worst some joriwala or neighbour is always ready to see to the work in addition to his own.

"Here too my meaning will perhaps be made clearer by an illustration, and fortunately I have an exceedingly apt one ready to hand. The Council has doubtless noticed that an amendment is to be proposed which will have the effect of striking out a clause under which, where the shift system prevails, boys were to be allowed to work for two shifts of four hours each, or eight hours in all, with

an interval of not less than two hours. This clause was inserted at the special request of the Hon'ble Mr. Mackay, in order to meet the case of boys in the Calcutta jute-mills, who, as he then thought, could not be brought under the seven hours clause. Subsequently some question arose, and on further conferring with my hon'ble friend I came to the conclusion that the general clause would completely cover their case. It seems that even now these boys are allowed about fifteen minutes in every hour, during the carrying out of some process at which they are not wanted. These rests will now be notified, and as they amount in eight hours to one hundred and twenty minutes the actual employment will not exceed six hours.

"I think this disposes of all the points about which any question has been raised, but there are still two or three matters regarding which the public may like some brief explanation. The first is as to the time at which these new provisions are to come into effect. We propose that the Act should not come into force till the beginning of next year. The object of this is to allow time for the necessary reorganization as recommended in paragraph 15 of the Commissioners' Report. Children will have to get certificates; arrangements must be made for the periods of rest; wages may have to be slightly re-adjusted,—that I think is the worst thing that will happen to women and children as a set-off against the ample and assured protection which we are giving them,—and factories entitled to exemption will have to apply for the issue of the necessary notifications. My hon'ble friend Mr. Bliss will see that all this will occupy some considerable time, and a similar interval would have to be given whenever the Bill became law. The fact of its being allowed therefore does not at all show that no harm would be caused by remitting the Bill for further reports.

"In the matters of female labour and of holidays it will be observed that the Government of India has reserved a general power of relaxation. We have taken this power for greater precaution as it is called—not because we think it very likely that we shall exercise it, for it is by no means our intention that the Act should be evaded or frittered away by exceptions—but because the industries which may fall under the Act are so numerous, and some of them so little known, that it is desirable that we should have the power to meet any difficulties which we cannot now foresee. I submit that this goes far to remove the only sound objection which either of my hon'ble friends has advanced to the Bill being passed into law at once.

"A good deal has been said—I do not mean in the course of this debate, but outside the Council—about schools for the half-timers. In this country

there is no compulsory education, and we have not seen our way to require mill-owners to establish schools; but Local Governments will be very ready to encourage by grants-in-aid any that may be opened. It is believed that there cannot be many large factories which have not some sort of a school near them already.

"My Lord, I cannot conclude my remarks without publicly expressing the thanks of the Government of India to Dr. Lethbridge and his coadjutors on the Commission for the admirable manner in which they have discharged their duties. They undertook the task in a benevolent and liberal spirit, and I think with the Hon'ble Mr. Mackay that nearly all the recommendations contained in their Report exhibit sound common sense and a just appreciation of the practical difficulties of the situation. They have been generally accepted and most of them have been embodied in the Bill now under consideration.

"My Lord, I now submit that there is no real objection to that Bill being proceeded with at once. I think I have shown that the provisions which are supposed to require further discussion are not after all so novel as has been represented, and that even so far as they can be regarded as novel they have been expressly accepted by some of the principal parties concerned, while no one else has raised any objection to them. Two protests have indeed reached the Legislative Department, but they are not directed at any of the provisions which have here been called in question. I also submit that these are reasonable provisions, and this Council is quite competent to say if this is so or not. It is a matter of common practice for a Select Committee to alter a Bill considerably after discussing the various suggestions, more or less novel, which are laid before it. If every alteration were held to necessitate a republication in the technical sense of that term and a call for fresh reports, legislation would be a much more tedious and troublesome process even than it is at present."

The Hon'ble SIR ANDREW SCOBLE said:—

"The criticism which the Bill has met with from hon'ble members at the other end of the table, so far as it has been hostile, has related so little to what the Bill contains, and so much to what it might have contained had certain apprehensions been realised, that I need add nothing to the very clear explanations which my hon'ble friend Mr. Hutchins has given in regard to those provisions of the Bill to which exception has been taken. Indeed, my hon'ble friend Mr. Nugent advanced such excellent arguments in favour of the sections which have been most contested that I confess I was surprised that he should wish the passing of

the Bill to be deferred. Postponement to-day means postponement not for a very few weeks, but until this Council meets again in Calcutta; and, as it is not desired by my hon'ble friend Mr. Mackay, who speaks in the name of the mercantile community, I hope that it will not be pressed.

"But there were two points in the speeches of my hon'ble friend Mr. Nugent and my hon'ble friend Mr. Mackay in regard to which I should like to make a few observations. In the first place, my hon'ble friend Mr. Nugent stated that the Bill submitted to the Select Committee was not the same Bill as that which I introduced in January of last year. That is an entire misapprehension on the part of my hon'ble friend. The Bill submitted to the Select Committee was the Bill originally introduced, but side by side with it, for the consideration of the Select Committee, according to the usual practice of the Legislative Department, was placed a skeleton Bill in which the Secretary had very carefully introduced and printed in italics all those additions and amendments recommended by the Factory Commission and other authorities which it was considered desirable to bring under the consideration of the Select Committee. It was perfectly open to the Select Committee to have set aside altogether that skeleton draft and gone to work on the original Bill, but, as a matter of convenience and economy of time, they took the skeleton draft as the basis on which to work, and converted it into the Bill which is now under the consideration of the Council.

"The second point to which I wish to refer is the request made by the Hon'ble Mr. Mackay that this Council should in a sort of indirect way point out the various industries to which the exemptions provided for in section 5B of the Bill would apply. It is impossible for this Council to give any indications in regard to such matters beyond those contained in the Bill. It will be for the Local Governments themselves to determine upon the representations of those interested in the industries concerned and upon a review of the circumstances of each case whether or not those industries come within the exemptions. I can give my hon'ble friend no further assurance than this, that I have no doubt that Local Governments will correctly construe this portion of the Bill, and will admit to the benefit of the exception such industries as may succeed in establishing a claim to exemption."

His Excellency THE PRESIDENT said :—

"I wish to offer one or two general observations before I put the question—not that I need occupy the time of the Council by endeavouring to show that

we are called upon to take precautions for the protection of the operatives of India beyond those which already have a place in the statute-book. The attention of the public was directed five years ago to the insufficiency of the existing law by the Indian Factories Commission, and the recent report of the Commission, so ably presided over by Dr. Lethbridge, has given additional proof of the necessity of further legislation. The need of it is, I believe, generally admitted, and the employers of labour would, I am convinced, be the last persons to contend that they were to be exempt from restrictions of a kind which is recognized as necessary in all civilized nations. The question seems to be not whether legislation is necessary, but whether our legislation goes too far or not. Now, I can well understand that it should be looked upon critically by those who are connected with commercial interests in this country. In these days of fierce competition the markets of the world are disturbed even by the slightest alteration of the conditions under which commodities are produced, and it is conceivable that an increase in the stringency of existing factory laws might have the effect of seriously prejudicing Indian manufacturers. I do not, however, believe that the Bill upon the table is likely to have such an effect, or that, as far as its main provisions are concerned, it goes beyond what is necessary in order to give to Indian operatives the amount of security against overwork which, considering the circumstances of this country, is due to them. Our proposals have been framed with an earnest desire to hold the balance fairly between the interests of Indian industry and the demands which have been made for an even more strict regulation of the conditions of factory labour. We have had to consider what was due to the employers of labour, and what was due to the employed, and I am glad my hon'ble friend Mr. Mackay gives us credit for having held the balance fairly. We have felt throughout—and I believe that our feeling has been shared by the Chambers of Commerce and the principal employers of labour—that it was absolutely necessary for us to set our house in order, and to effect a settlement of this question which could be accepted both in India and at home as a thorough and sufficient settlement. In reference to what has been said by some of our hon'ble colleagues as to the suspicion that Indian manufacturers, or Indian factory hands, are being sacrified under pressure from the representatives of British manufacturing interests in the House of Commons, I may perhaps mention here that there are at this moment before the British Parliament no less than four Bills dealing with this subject and containing provisions for making the British law much more stringent than it is.

"It must not be forgotten that the assemblage of the Berlin Conference marks an epoch in the history of this question, and that it was impossible

for the Government of this country, after the adhesion of Her Majesty's Government, to avoid giving effect to the principles which the Conference accepted. Now, it is perfectly true that the Conference took no special cognizance of factory labour other than that employed in European factories, and that the conditions under which labour is employed in Indian factories differ so widely from those under which it is employed in other parts of the world that it would be inequitable to apply to Indian factories the whole of the restrictions which are appropriate for the protection of European mill hands. We have not failed to recognise this distinction, and at certain points we have, as hon'ble members are aware, diverged considerably from the recommendations of the Berlin Conference.

"The Bill, for instance, recognizing the difference between night work in this climate, and in that of Europe, to which the Hon'ble Mr. Evans and the Hon'ble Mr. Bliss have so well called attention, permits the employment of female labour at night in factories where the shift system is in force, instead of following the Conference in discouraging it altogether. In the case of children, the Bill forbids their employment below the age of nine, whereas the Conference accepted a minimum of twelve, to be reduced to ten in southern countries. We are satisfied that in this country the age of nine is a reasonable equivalent. The Bill again does not create any class between children and adults. A lad of fourteen will be regarded by our law as an adult, instead of becoming a 'young person,' and, as such, entitled to an intermediate degree of protection. We have also considered ourselves justified in accepting a slightly longer maximum time of employment for children than that recommended by the Conference, although I have no doubt that it will only be in very rare cases that the half time during which children are to be employed in our mills will approximate to the maximum of seven hours which we have accepted as against the six hours' maximum of the Conference.

"We believe that the effect of our measure will be to place factory labou in India on a proper footing, and that our Bill will be accepted here and at home, not, as the Hon'ble Mr. Nugent would have us believe, as a mere 'prelude' to still further restrictions, but as a settlement as final as any settlement of such a question can be; nor I hope shall we, who believe in the great future of the mill industry of India, allow ourselves to suppose that such restrictions as those which we are about to impose will affect that industry with paralysis. The bases upon which its prosperity reposes are so solid as to render it in the highest degree improbable that the amount of interference to which it will be subjected is likely to arrest its development. I hold in my hand a

statement illustrative of the progress which has been made by the cotton industry of India during the last decade. I find that our mills have increased during that time from 56 to 105, and the number of spindles from less than one and a half to more than two and three-quarter millions. The number of persons employed had nearly doubled within the same period, and the value of the exports, foreign and coast-wise, of the goods made has risen from 345 lakhs to 853 lakhs. These figures do not include the value of the trade which does not go by sea, but I believe that the increase of this also has been equally large. No development of Indian trade has been so remarkable as this rapid and uninterrupted progress; and, considering the advantage enjoyed by our factories from their proximity both to the fields in which the staple is grown, and to the markets which take their supplies from us,—considering the cheapness of Indian labour, and the stimulus likely to be given to our manufactures by the discovery of new coal-fields and the extension of our railway system,—we are surely justified in looking forward with the most sanguine anticipations to the future of this great industry.

"In the case of our jute-mills, although the figures are not so remarkable, a marked and satisfactory progress has been achieved during the past ten years. With such a past to look back to, and such a future lying before them, the mill-owners of India will, I feel sure, dismiss from their minds any timorous apprehensions as to the effects which this Bill is likely to produce upon them. They need not, I venture to think, be quite so much afraid of the competition of 'their rivals from across the sea' as the Hon'ble Mr. Nugent would have them be. We trust that employers and employed will adapt themselves to the new order of things, and that, if any interruption or inconvenience is occasioned, they will be of a temporary character. By restricting the hours during which women can be employed to eleven per diem, by limiting the hours of children to half time, providing in both cases a sufficient interval of rest, and by securing to the whole of the factory hands of India the weekly holiday, to the importance of which we ourselves are so keenly alive, we are, I venture to think, not conceding anything beyond what all reasonable employers of labour would themselves be prepared to concede. We are not without hope that they will find compensating advantages—advantages which have been found by British manufacturers under like circumstances—in the increased efficiency of the work which will be done for them under the new conditions, and we look to them to co-operate loyally with us in seeing that the provisions of the Act are observed in the spirit as well as in the letter."

The Motion was put and ageed to.

The Hon'ble SIR ANDREW SCOBLE also moved that the following amendments be made in the Bill as amended, namely :—

1. That in sub-section (4) of the new section 6 embodied in section 10 of the Bill as amended the words "all or any of" be inserted after the word "declare", and that the words "or to women employed in any process so described" be added at the end of the sub-section.

2. That for sub-sections (3) and (4) of the new section 7 embodied in section 10 of the Bill as amended the following be substituted, namely :—

"(3) No child shall be actually employed in any factory for more than seven hours in any one day.

"(4) Every child who is actually employed in any factory for six hours in any one day shall be allowed an interval or intervals of rest amounting in the aggregate to at least half an hour."

3 That in sub-section (1) of the new section 10 embodied in section 10 of the Bill as amended, for the words and figures "sub-sections (3) and (4)", the word and figure "sub-section (4)" be substituted.

4. That the words "Subject to the control of the Governor General in Council" be inserted at the commencement of sub-section (1) of the new section 18 embodied in section 16 of the Bill as amended, and that for sub-section (2) of the same section 18 the following be substituted, namely :—

"(2) The Governor General in Council may from time to time make rules requiring occupiers of factories to furnish such returns, occasional or periodical, as may be necessary for the effectual carrying out of this Act."

5. That in sub-section (2) of the new section 20 embodied in section 18 of the Bill as amended, for the words "between fifty and twenty" the words "below fifty and not below twenty" be substituted.

The Hon'ble MR. MACKAY said :—

"My Lord, it was with regret that I found that the Government had thought it necessary to bring in an amendment to the Bill as submitted by the Select Committee, which amendment will have the effect of withdrawing the eight hours option for children who work in shifts of not over four hours each with an interval of two hours between the shifts. Seeing the age of children has been raised two years, I think the eight hours option recommended by the Select Committee might have been allowed to stand; but, looking to the remarks which

have fallen from the Hon'ble Mr. Hutchins on the subject, I am prepared to accept the amendment."

The Motion was put and agreed to.

The Hon'ble SIR ANDREW SCOBLE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

MOORSHEDABAD BILL.

The Hon'ble SIR ANDREW SCOBLE moved for leave to introduce a Bill to confirm and give effect to an Indenture between the Secretary of State and the Nawab Bahadoor of Moorshedabad, Amir-ul-Omrah. He said:—

"Saiyid Munsur Ali, the last of the Nawabs Nazim of Moorshedabad, retired in 1880, and was succeeded by his son Ali Kadr, upon whom the hereditary title of Nawab Bahadoor of Moorshedabad was conferred in 1882. The terms under which Munsur Ali retired were arranged between him and the Secretary of State, but it was left to the Government of India to embody the details of the arrangement in a deed of settlement which should be accepted by his successor. The discussion of these details has occupied a much longer time than was expected, and it was only last week that the deed was executed. The object of the Bill which I now ask leave to introduce is to confirm and give effect to the provisions of this deed, which have been approved both by the Secretary of State and by the Nawab Bahadoor.

"As the Nawab is, I regret to say, in a somewhat precarious state of health, he is particularly anxious that this Bill should be passed during the present sitting of the Council, and I shall therefore ask Your Excellency to suspend the rules, in order that it may be carried through the remaining stages on Saturday."

The Motion was put and agreed to.

The Hon'ble SIR ANDREW SCOBLE also introduced the Bill.

The Hon'ble SIR ANDREW SCOBLE also applied to His Excellency the President to suspend the Rules for the Conduct of Business.

The President declared the Rules to be suspended.

The Hon'ble SIR ANDREW SCOBLE also moved that the Bill be taken into consideration at the next meeting of the Council.

The Motion was put and agreed to.

The Council adjourned to Saturday, the 21st March, 1891.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 23rd March, 1891.

Government of India Central Printing Office.—No. 72 L. D.—23-3-91.—308—C. H. L.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Government House on Saturday, the 21st March, 1891.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I.

The Hon'ble Lieutenant-General Sir G. T. Chesney, K.C.B., C.S.I., C.I.E., R.E.

The Hon'ble Sir A. R. Scoble, Q.C., K.C.S.I.

The Hon'ble P. P. Hutchins, C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble Colonel R. C. B. Pemberton, R.E.

The Hon'ble F. M. Halliday.

The Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar, C.I.E.

The Hon'ble H. W. Bliss, C.I.E.

The Hon'ble G. H. P. Evans.

The Hon'ble J. Nugent.

The Hon'ble J. L. Mackay, C.I.E.

The Hon'ble J. Woodburn.

The Hon'ble Rájá Udai Partab Singh of Bhinga.

REPEALING AND AMENDING BILL.

The Hon'ble SIR ANDREW SCOBLE moved that the Report of the Select Committee on the Bill to repeal certain Obsolete Enactments and to amend certain other Enactments be taken into consideration. He said:—

"The schedules to this Bill have been carefully examined both in the Legislative Department and by the Select Committee; and Local Governments have been consulted, and their suggestions scrupulously followed, with regard to such enactments as relate more especially to the Provinces under their administration. I think therefore that I may safely ask the Council to accept the Bill without fear that our desire to remove dead matter from the statute-book will lead to inconvenience or difficulty in the construction or administration of the law.

"So far as the Bill is an amending Bill there is only one matter which, I think, requires special reference. Under Bengal Regulation III of 1822, the distribution of business between the members of the Board of Revenue, and the confirmation of settlements of land-revenue, are left to be determined by the Governor General in Council. This arrangement, suitable enough at the time when the Governor General was also Governor of Bengal, has become obviously inconvenient now that the direct administration of Bengal is no longer in the hands of the Government of India. Advantage has therefore been taken of the opportunity afforded by this Bill to place the Local Government of Bengal on the same footing as other Local Governments, and to empower the Lieutenant-Governor to exercise the functions which properly belong to him in both these respects."

The Motion was put and agreed to.

The Hon'ble SIR ANDREW SCOBLE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

INLAND STEAM-VESSELS ACT, 1884, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved that the Report of the Select Committee on the Bill to amend the Inland Steam-vessels Act, 1884, be taken ~~approval,~~ into consideration. He said:—

"When introducing this Bill I explained that its main object was to divide inland steam-vessels into three classes for certain purposes instead of into two classes as at present. This change in the law has met, I may say, with universal approval, and I need not dwell further on the subject.

"The Select Committee proposes to alter the words 'third class master' into 'serang'. The change seems desirable; it is generally better to call men by the names which they actually bear than to invent new ones for them.

"In one respect there has been some misapprehension, and, though the misapprehension has been largely allayed already, I may as well allude to the matter. It has arisen in connection with section 28 (*4*). It has been said that it is quite unnecessary to make the masters and engineers referred to in that sub-section take out certificates under the Inland Steam-vessels Act, the certificates they already possess under other Acts and Regulations being a suffi-

cient guarantee of their fitness. As to this I would explain that the certificates they possess under other Acts may be a sufficient guarantee of fitness, but, for various reasons which I need not dwell on, it is impossible to withdraw those other certificates if the holders are guilty of misconduct when employed in an inland steam-vessel.

"On this account it is proposed that such persons must also, if the Local Government so direct, possess a certificate under the Inland Steam-vessels Act; if they possess a certificate under the Inland Steam-vessels Act, it becomes possible in case of misconduct to withdraw that certificate and so to prevent the offender from again taking charge of an inland steam-vessel.

"This provision of the law need not be put in force in any Province where it is not required, and power is taken to make the grant of the certificate under the Inland Steam-vessels Act little more than a formality in the case of men who already possess the other certificates referred to. When explained in this way, there is really no objection to sub-section (*4*) of section 28, and it serves a useful purpose."

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

OUDH COURTS BILL.

The Hon'ble MR. WOODBURN moved that the Report of the Select Committee on the Bill to amend the constitution of the Court of the Judicial Commissioner of Oudh and alter the Law with respect to Second Appeals and other matters in that Province be taken into consideration. He said:—

"It was explained on the introduction of the Bill that its object was to strengthen the Court of the Judicial Commissioner of Oudh and to assimilate the law of appeal in civil suits in Oudh to that which obtains in other parts of India.

"The alterations of the Bill in Select Committee have been few.

"At the instance of the Judicial Commissioner and the Lieutenant-Governor, the hearing of civil appeals by the two Judicial Commissioners sitting together will ordinarily be limited to cases involving claims above Rs. 10,000 in value; and power has been given to the Judicial Commissioner to recall a case which has been made over to the Additional Judicial Commissioner. The Select Committee recommend that, when the two Judicial Commissioners have referred to the High Court a difference of opinion in a case respecting the confirmation of a sentence of death, power should be given to the Chief Justice, when he sees fit, to send the case to a Bench of the High Court instead of to a single Judge. The reference to the High Court in the case of such differences of opinion has been accepted by the Lieutenant-Governor as the solution best suited to the circumstances in which the Bill has been brought forward.

"Under the Act of 1879, when an appeal is preferred to the Judicial Commissioner from a judgment or order passed by him in any other capacity, or in which he has a personal interest, he was required to report the fact to the Local Government, which might transfer the case to the High Court or appoint an officer to be an Additional Judicial Commissioner for the disposal of the case. Now that there are to be two Judicial Commissioners, it is simpler to provide that in any such case the appeal shall be heard by the other Judicial Commissioner.

"The Bill needs no further remarks. I should personally have been glad to see a larger measure for the better administration of justice in Oudh, but the people of the Province are to be congratulated on an adjustment which at least gives them what they have not hitherto had, a hearing in the final stage before two Judges in all capital cases and in all civil suits of importance or intricacy. The civil litigation in a rich and prosperous province, characterized by large landed properties, is frequently of great pecuniary value; and, alike in the decision of these cases and in the confirmation of death sentences, the Judicial Commissioner's post has hitherto been one of such isolation as to make the duties of his office among the most anxious and arduous within my knowledge. In these he will now have, to his relief and to the great benefit of the province, the help of a permanent colleague."

The Hon'ble THE RAJA OF BHINGA said:—

"The Bill as it stands at present has my cordial support. But at the same time I respectfully beg to add that the establishment of a Chief Court would have been more satisfactory to the Taluqdars and legal practitioners of Oudh

than the present arrangements. With this observation I vote for the passing of the Bill."

The Motion was put and agreed to.

The Hon'ble MR. WOODBURN also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

BENGAL SECRETARIAT LIBRARY.

MOORSHEDABAD BILL.

The Hon'ble SIR ANDREW SCOBLE moved that the Bill to confirm and give effect to an Indenture between the Secretary of State and the Nawab Bahadoor of Moorshedabad, Amir-ul-Omrah, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble SIR ANDREW SCOBLE also moved that the Bill be passed.

The Motion was put and agreed to.

The Council adjourned *sine die.*

S. HARVEY JAMES,

Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 23rd March, 1891.

Government of India Central Printing Office.—No. 111 L. D.—21-3-91.—308.—C. H. L.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 14th May, 1891.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
His Excellency the Commander-in-Chief, BART., V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C S.I.
The Hon'ble Sir A. E. Miller, KT., Q C.
The Hon'ble Lieutenant-General H. Brackenbury, C.B., R.A.
The Hon'ble Colonel R. C. B. Pemberton, R.E.

BANKRUPTCY AND INSOLVENCY BILL.

The Hon'ble SIR ALEXANDER MILLER moved that he be substituted for Sir Andrew Scoble as a member of the Select Committee on the Bill to amend and consolidate the Law of Bankruptcy and Insolvency in British India. He explained that an immense mass of papers had been put into his hands with respect to the Bill, and, although every effort would be made to go on with it, he did not expect to be able to summon the Select Committee during the present season It was, however, desirable that his name should now be substituted for that of Sir Andrew Scoble.

The Motion was put and agreed to.

INDIAN MERCHANT SHIPPING ACT, 1880, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved that the Hon'ble Sir Alexander Miller be substituted for Sir Andrew Scoble as a member of the Select Committee on the Bill to amend the Indian Merchant Shipping Act, 1880.

The Motion was put and agreed to.

BANKERS' BOOKS EVIDENCE BILL.

The Hon'ble SIR ALEXANDER MILLER moved that he be substituted for Sir Andrew Scoble as a member of the Select Committee on the Bill to

amend the Law of Evidence with respect to Bankers' Books, and that the Hon'ble Mr. Hutchins be added to the Committee. He said that the Bill was, he thought, nearly ready to be passed, and he hoped that with the help of the Hon'ble Mr. Hutchins he might be able to pass it at an early meeting of the Council.

The Motion was put and agreed to.

COLONIAL COURTS OF ADMIRALTY (INDIA) BILL, 1891.

The Hon'ble SIR ALEXANDER MILLER also moved for leave to introduce a Bill to declare certain Courts in British India to be Colonial Courts of Admiralty. He said:—

"The Bill is, I think, in the hands of all hon'ble members, and I may say that it is required because an Act of Parliament has been passed which, without our aid, might give rise to a good deal of confusion. As I read the Act, if we pass this Bill, we will provide that certain Courts, which it is desirable should have admiralty jurisdiction, shall be Colonial Courts of Admiralty: if we do not pass such a measure, then the English Act, of its own force, will make every District Court in the country a Colonial Court of Admiralty on the 1st of July next, a result which might be very inconvenient.

"The only other observation which I have to make on the Bill—unless any hon'ble member has a question to ask—is that we state in the Statement of Objects and Reasons that under the English Act of 1890 certain appeals will lie. It seems to me that under the Act of 1890 those appeals will only lie if we say nothing; so long as we do not interfere with the ultimate appeal to the Queen in Council we may create such intermediate appeals as we think fit: but it is probably desirable that we should say nothing on the present occasion.

"If any difficulty arises regarding these appeals, or it is thought desirable hereafter that an appeal should lie to any other Court than those named, it seems to me that it will then be soon enough for us to take up that question."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also introduced the Bill and moved that it be taken into consideration.

The Motion was put and agreed to.

1891.] [*Sir Alexander Miller.*]

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill be passed.

The Motion was put and agreed to.

The Council adjourned *sine die.*

S. HARVEY JAMES,

Secretary to the Government of India,
Legislative Department.

SIMLA;
The 15th May, 1891.

G. C. Press, Simla.—No. 62 L. D.—15-5-91.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 16th July, 1891.

PRESENT:

The Hon'ble Sir P. P. Hutchins, K.C.S.I., *presiding.*
His Honour the Lieutenant-Governor of the Punjab, K.C.S.I.
His Excellency the Commander-in-Chief, BART, V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble Sir A. E. Miller, KT., Q.C.
The Hon'ble Lieutenant-General H. Brackenbury, C.B., R.A.
The Hon'ble Colonel R. C. B. Pemberton, R.E.

BANKERS' BOOKS EVIDENCE BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Hon'ble Mr. Rattigan be added to the Select Committee on the Bill to amend the Law of Evidence with respect to Bankers' Books. He said that, as nothing had as yet been done in the Select Committee, he thought it as well to utilise Mr. Rattigan, and, with that object, a copy of the Bill had been sent to him.

The Motion was put and agreed to.

MADRAS SMALL CAUSE COURT BILL.

The Hon'ble SIR PHILIP HUTCHINS asked for permission to postpone till the next Meeting of the Council the Motion for leave to introduce a Bill for authorizing the transfer of certain jurisdiction from the High Court of Judicature at Madras to the Court of Small Causes of Madras.

Permission was granted.

INDIAN CHRISTIAN MARRIAGE ACT, 1872, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved for leave to introduce a Bill to validate certain marriages solemnized under Part VI of the Indian Christian Marriage Act, 1872. He said:—

"Part VI of the Indian Christian Marriage Act is only adapted for a case in which both parties being married are Christians, and it appears that some of

the Registrars appointed, not having noticed that, have solemnised marriages under this Part in certain cases where only one of the parties was a Christian; consequently, under the existing law, these marriages are invalid. The object of the Bill is to validate those marriages which have already taken place, and to take steps to prevent the possibility of the same thing happening in the future."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also introduced the Bill.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 23rd July, 1891.

S. HARVEY JAMES,

Secretary to the Government of India,
Legislative Department.

SIMLA;
The 17th July, 1891.

G. C. Press, Simla.—No. 147 L. D.—17-7-91.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 23rd July, 1891.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of the Punjab, K.C.S.I.
His Excellency the Commander-in-Chief, BART., V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Sir P. P. Hutchins, K.C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble Sir A. E. Miller, KT., Q.C.
The Hon'ble Lieutenant-General H. Brackenbury, C.B., R.A.
The Hon'ble Colonel R. C. B. Pemberton, R.E.

MADRAS SMALL CAUSE COURT BILL.

The Hon'ble SIR PHILIP HUTCHINS moved for leave to introduce a Bill to extend the jurisdiction of the Court of Small Causes of Madras. He said:—

"As indicated by its title, the effect of this Bill, when it becomes law, will be to transfer the cognizance of certain original civil suits, arising within what is called the City of Madras, from the High Court to the Court of Small Causes. It will give to the Madras Small Cause Court a jurisdiction which is at present excluded from it by section 19 of the Presidency Small Cause Courts Act of 1882, and that is the reason why it has to be introduced in this Council; but it is really a local measure only, and it has been framed in order to give effect to proposals which have been frequently pressed on the Government of India by the Governor of Madras in Council.

"Last year, after we had obtained the approval of Her Majesty's Secretary of State to those proposals, we drew up a rough Bill and transmitted it to Madras, in order that before its introduction we might be quite certain that it expressed the intentions of the local authorities. This rough sketch was unfortunately treated as a carefully prepared measure which the Government of India was determined, without any regard to local criticisms and at all hazards, to pass into law

before the day which the Secretary in the Legislative Department had, in accordance with ordinary practice, tentatively inserted as the date on which it might come into force. The day thus fixed happened to fall within the High Court's vacation, and a cry was at once raised that our aim was to abrogate the Court's jurisdiction without allowing the Judges a chance of being heard. This point was immediately put right by its being explained that the 1st July was merely a tentative date, that we had no sort of desire to hurry on the Bill, and that in any case it would have to be circulated after introduction, when, according to rule, a reasonable time would be allowed for its consideration and criticism by every one concerned. I am afraid, however, that the idea which got abroad that we were trying to rush the Bill in spite of opposition has not even now been altogether dissipated; and it seems to have infected the mind of the High Court itself as then constituted, for the Hon'ble the Judges repeatedly declare that the measure has been launched without that serious attention and consideration which its gravity demands. I shall presently show that the outlines of the scheme had emanated from the High Court itself, and had been under the consideration of the local authorities for something close on twenty years. Those outlines, however, had perhaps been filled in by our sketch draft in a manner which was open to some objection; and before I proceed further it will be well to make clear both what the Bill which I now lay on the table contains and in what respects it differs from the rough draft to which I have referred.

"And, first, as to the date on which the measure is to come into force, in order to avoid all possibility of future misunderstanding I propose to allow the Governor in Council to appoint the day by notification in the Fort St. George Gazette.

"In the second place, I have cut out all reference to the insolvency jurisdiction. The Government of India recognize the disadvantage of a dual jurisdiction in such matters, and fully accept the assurance of the Hon'ble the Chief Justice that an alteration of the present practice would fail to afford any material relief to the High Court.

"In the third place, at the suggestion of my hon'ble and learned friend Sir Alexander Miller, I have preserved the concurrent jurisdiction of the High Court even in those cases which are to be brought within the cognizance of the Court of Small Causes. Personally I am inclined to agree with the Local Government in this matter, and to hold that we ought to apply the ordinary rule laid down in the Code of Civil Procedure, which is that, when a transfer of jurisdic-

tion is made from a superior to an inferior Court, the power of the former to take cognizance of cases included in such jurisdiction, except by specially calling them up for trial, is *ipso facto* ousted. Section 15 of the Code enacts that every suit must be instituted in the Court of the lowest grade competent to try it, and therefore in no other Court. My own view with reference to the change of jurisdiction now under consideration is that, until the new tribunal has proved its ability to deal with cases involving difficult questions of mercantile law and usage, it would not only be right and proper for the High Court, but would even be its duty, to lend a favourable ear to an application that such a suit should be called up for trial by itself. The Hon'ble the Judges have, however, repudiated the idea of any understanding as to the course which they would adopt, and, as it is impossible to fetter their discretion upon such a point by legislation, the only alternative seems to be to allow plaintiffs for the present and under certain conditions to choose their own forum. The condition will be similar to that which already prevails in regard to suits cognizable by the Small Cause Court under the existing law. If the plaintiff chooses to resort to the High Court when he might go to the Small Cause Court, he will be debarred from recovering costs, and in case of failure he will have to pay costs as between attorney and client, unless the presiding Judge certifies that the suit was one fit to be brought in the High Court. According to my recollection, there is no class of plaintiffs who give the High Court more trouble than paupers, and I do not think that any provision as to costs is likely to influence them much in the choice of a forum. Perhaps the Hon'ble the Judges may wish to propose some special proviso for the exclusion of pauper suits from the High Court; but I will not venture to do more than suggest the matter for their consideration in this general way.

"Then as regards court-fees, the chief ground and, I think I may say, the only ground on which the High Court based its suggestion that the Bill had been launched without due consideration was that the sketch draft omitted to say in so many words what scale of court-fees should be levied. We intended that the scale which Chapter X of the Act lays down for small causes proper should be followed in regard to all suits which might be instituted in the Court of Small Causes. The High Court considers that this Chapter cannot apply to suits which are excluded by section 19 of the Act, and to meet this objection it has now been provided in the Bill that Chapter X of the Presidency Small Cause Courts Act shall govern all proceedings which may be heard before the Court or any Judge thereof.

"I now come to another point about which the High Court as constituted last September has expressed itself with perhaps unnecessary warmth. The jurisdiction which the draft Bill before them, which, as I have so frequently pointed out, was only a rough attempt to sketch what was believed to be the intention of the local authorities and should have been so treated—the jurisdiction which that draft purported to make over to the Small Cause Court included suits up to the value of Rs. 2,500, but reserved power to the Local Government to extend this limit by notification. The idea was that the suits up to Rs. 2,500 might prove either too few to occupy one Judge of the Small Cause Court, or too many for one Judge but not enough for two, and that the Legislature, having established the principle that the original jurisdiction should be reasonably divided between the High Court and the Court of Small Causes, might leave it to the Local Government to make the necessary adjustment from time to time with reference to the business to be done. There was certainly no thought of giving the Executive Government power to extinguish the High Court's original jurisdiction altogether; and, if at any time His Excellency the Governor in Council had been so ill-advised as to make any attempt to do this, it could easily have been defeated by the High Court calling up such cases as it thought proper to its own file. The fact was that we did not contemplate the possibility of the Executive Government exercising its powers without reference to the Judges and otherwise than substantially in concurrence with their advice. The High Court had itself proposed the transfer and might reasonably have been expected to give it effect as from time to time might seem reasonable. As, however, the objection has been raised, and it is perhaps within the bounds of possibility that a Governor in Council might go beyond what is reasonable, and even that he might succeed in securing that previous sanction of the Government of India which the sketch draft made indispensable, there can be no objection to the Legislature fixing any fair limit to his powers. The limit suggested in the Bill which I have laid on the table is Rs. 10,000, but the precise figure is open to revision and will be a matter for the consideration of the Select Committee. On the other hand, now that the concurrent jurisdiction of the High Court is to be maintained, I think the pecuniary value of suits to be transferred to the Small Cause Court absolutely and without any special order of the Local Government may well be raised from Rs. 2,500 to Rs. 5,000.

"Hon'ble members will have now gathered the exact practical effect of the Bill which I have laid before them. Stated in a few words, it is this. There will be a regular side to the Court of Small Causes at Madras. It will try all ordinary suits up to a value of Rs. 5,000, which are not already cognizable on the small cause side of the Court. Some few classes of suits are excepted, and, speaking

generally, it may be stated that the admiralty, matrimonial and testamentary jurisdiction of the High Court will remain unimpaired. It will be left to the Chief Judge to depute any member or members of the Court to preside from time to time on the regular side. The procedure will be governed by the Code of Civil Procedure, and the decrees will be subject to appeal to the High Court. Power is reserved to the Local Government to extend the pecuniary limit of this regular jurisdiction from Rs. 5,000 to any sum not exceeding Rs. 10,000; and it is intended that they should exercise this power with reference to the number of Judges who can be made available in the High Court and Small Cause Court, respectively, and the business which has to be distributed between them. In other words, without going so far as to establish a District Court with fixed powers, which shall oust the jurisdiction of the High Court, and the Judge of which might not have enough work or might have too much, we shall make use of machinery which already exists and apply it under conditions so elastic that it will be in the power of the Local Government to assign to the inferior Court just so much work as may fully occupy the one, one and a half, two or even three Judges whom it is prepared to employ over and above those required for small cause work proper, and to reserve for the High Court so much of the more important original civil business as with the criminal sessions and insolvency work will occupy the one Judge, or it may be one and a half, who can be spared from the appellate side of the High Court. My own view of the situation is that in all probability one Judge ought to be ample for the whole of the original work which deserves to be retained in the High Court. Whether a single Judge will be enough for the regular side of the Small Cause Court must depend on the effect which this legislation may have on the petty litigation of the City. It has been all along recognized that it is likely to cause a considerable increase in the number of suits, and it may well be that the work will be beyond the powers of a single Judge even with the occasional aid of a colleague not at the time required for the small cause work. Should this prove to be the case, the Local Government can at once apply an effectual remedy by appointing a temporary additional Judge, or by enlarging the jurisdiction to such extent as may seem desirable and giving another permanent Judge. This elasticity of the scheme is to my mind one of its chief recommendations. I need hardly remind any one conversant with the work of the Madras High Court in the last decade or two how extremely difficult it is to get an additional Judge appointed to the High Court by letters patent. Mr. Justice Innes' long and ineffectual struggle for the appointment of a fifth Puisne Judge must be well remembered in Madras; and, although in 1883 I had the advantage of entering into his labours, I might never have succeeded but for the

fact of my having in 1886 become a Member of the Government and for a further happy concatenation of circumstances of which I was able to take advantage to overcome the very reasonable objections entertained by the Secretary of State.

" But now it may be asked—indeed it has been asked—even granted that the scheme is a good one, why press it at the present time? There is a fifth Puisne Judge at last, and if he is confirmed the High Court will probably be able to get through the work which will come before it for some years to come—why not get him confirmed and have done with it? The simple answer is that this puts the case on an entirely false issue. I am surprised and sorry to find this put forward as the only real issue in some of the newspapers which had no full knowledge of the facts; but I still more regret that the High Court itself, as constituted last September, should have ventured to say that 'the measure appears to have been designed with a purely financial object, simply and solely to relieve the High Court of a portion of its work and thereby enable the Government to avoid appointing permanently a fifth Puisne Judge.' If this were the sole or even the main object in view, I should still think that the measure is one which deserves to be carried into effect, first, in order that we may ascertain whether after all the fifth Puisne Judge is really necessary, and secondly, because in a few years' time we may have a sixth Judge proposed and exactly the same trouble over again. But so far is this from being the main object in view that the Local Government in its last letter, while expressing 'a decided opinion that the present strength of the High Court will never admit of reduction,' is equally decided that the Bill is necessary in order to provide a tribunal both less expensive and less dilatory than a High Court.

" I may say, then, that the objects and reasons of this Bill are twofold. The first is to remove that 'practical denial of justice to a not insignificant portion of the inhabitants of the city' which the High Court admits to exist, and to be inevitable under the present system of judicial administration in the Presidency-town. And the second is to obviate the lamentable waste of judicial power involved in that system, which requires every petty dispute not technically a small cause to be fully investigated by so highly paid an officer as a Judge, or perhaps even a Chief Justice, of the High Court. This waste is more marked in Madras than in Bombay or Calcutta, because the litigation is pettier, and because the original jurisdiction of the Court extends over a far wider area, and one much less distinguishable from the outer Mufassal. It includes a large number of suburban hamlets, and there is no conceivable reason why a petty dispute arising in one of

these hamlets should occupy the attention of a High Court Judge on Rs. 3,750 with all his paraphernalia, when a similar dispute outside the toll-bar would be adequately dealt with by a Munsif drawing perhaps no more than Rs. 200.

"I say then that, quite apart from the question whether the fifth Puisne Judge should be retained permanently or not, there are the strongest possible reasons for amending the existing state of things in Madras. Even those Judges who deprecate the measure concede this much, for they distinctly 'approve of the measure so far as its effect will be to create a cheaper *forum* for certain classes of actions which will not endure the expense entailed on suitors' in the High Court. It is true that they add a rider to the effect that the result of establishing such a tribunal will be to multiply suits to an extent which will astonish the Government; but, if their estimate turns out to be correct, what will it show? It will only prove that the present denial of justice is even more serious, and therefore that the measure which I am advocating is still more necessary, than had been supposed.

"I have seen it stated that the High Court has only recently been made aware what was really contemplated, and, as I have already mentioned, the Court itself has thought fit to denounce the measure as crude and ill-considered. It must, however, be remembered that three of the six Judges then on the Bench were officiating only, while the oldest and most experienced dissented from the majority. It must also be borne in mind that their remarks were directed to the original sketch which has since been modified in various material respects. I do not anticipate that the Court as now constituted will object to the Bill which I have placed on the table, and for that reason I abstain from any further criticism of its letter; but all the same it is right that I should show that the measure originated with the High Court itself, and has received from it, as well as from the Government, very ample consideration.

"When I had myself the honour of a seat among Their Lordships, I was greatly struck, coming as I did from the Mufassal and from a special enquiry with a view to reorganize the Mufassal Courts, by what I have ventured to describe as a lamentable waste of judicial power. The remedy which suggested itself to me is the very remedy which I now wish to apply. On submitting the matter to the Chief Justice I learned that the same remedy had been suggested by Sir Walter Morgan and more than once urged by himself. I mention this partly because Sir Walter Morgan and Sir Charles Turner were specially remarkable among Chief Justices for their knowledge of the country and talent for organisation, and partly because it will help to explain a letter which Sir Charles Turner drafted, embody-

ing the Court's deliberate and unanimous proposals, and which I will now proceed to read so far as it is material. It is dated 27th February, 1885, and contains the following paragraphs :—

* * * * *

'7. A measure suggests itself which would at once effect this object, benefit suitors and not injuriously affect the legal profession, *viz.*, that the Court of Small Causes at the Presidency-town should be invested with power to try as a Court of Original Jurisdiction all suits (of which it at present cannot take cognizance) except testamentary, matrimonial and maritime, arising within the local limits of the High Court, and not exceeding in value Rs. 2,000 or Rs. 2,500, subject to an appeal to the High Court.

'8. The exclusive jurisdiction of the High Court in certain classes of cases entails on poorer suitors expense altogether out of proportion to the benefit they derive from the presumed superiority of the forum. It not unfrequently happens that suits are instituted for the partition of immoveable property where the costs incurred exceed the value of the subject-matter. The same observation applies to other cases, such as maintenance, mortgage, inheritance and administration.

'9. In a suit for partition which recently came before the Court the value of the property was Rs. 169 subject to a mortgage for Rs. 100, which it was the object of the suit to avoid. The suit was instituted *in formâ pauperis*, and no party was in a position to engage legal assistance. It frequently happens in a suit for maintenance that the rate awarded, or indeed claimed, does not exceed a few rupees *per mensem*. Yet it may be necessary to determine whether the plaintiff's husband was a divided member of the family, whether there was ancestral property, whether there were debts and to what amount, how many members have to be married and maintained, and whether the widow has forfeited her right by unchastity.

'10. In other cases, of which the High Court has not exclusive cognizance, suitors are compelled to resort to it if it is necessary to obtain the attachment of immoveable property before judgment.

'11. In view of the expenses entailed on the poorer classes of suitors, this High Court has admitted vakils to plead on the original side, so as to avoid the necessity for the employment of the higher-paid agency of attorneys and counsel; but it has been found impossible to reduce court-fees without encouraging the institution of suits in the High Court which should be brought in the Court of Small Causes.

* * * * *

'16. The appellate and supervisional work of the High Court is, and to all appearance will continue to be, sufficient to occupy the time of at least four Judges. The strain now experienced by the Court arises from the necessity of employing a second Judge in the disposal of business on the original side. The value of a suit is no certain criterion of the expense of judicial time occupied in its disposal, and it seems inexpedient to employ a

highly-paid judiciary in the disposal of cases which, if they arose on the other side of a toll-bar, would be triable by a District Munsif.

'17. Meanwhile, the trial of suits which from their value or intricacy are properly cognizable by a High Court is retarded by the disposal of petty litigation of the nature above indicated.

'18. The strengthening of the Small Cause Court by the appointment of an additional Judge, who would possess the qualifications of a Subordinate Judge, on a salary of Rs. 1,200 or Rs. 1,500 per mensen, would, the Court believes, avoid the necessity for the appointment of an additional Judge of the High Court—at all events for a time. Whether it may not ultimately become necessary is a question upon which the Court cannot at present express a decided opinion; but, on all grounds, it appears desirable that the experiment now proposed should be made.

'19. If the scheme of the Court is accepted, it is believed that a reduction of the establishment of the High Court might set free some funds to provide for the establishment required by conferring on the Small Cause Court a new jurisdiction.

'20. It will be in the recollection of the Government that the proposal now made is not novel.

'21. It originated in a correspondence between the late Chief Justice and the Government between 1872—1877. It was more formally made in a minute by Mr. Justice Busteed (then Chief Judge of the Small Cause Court, but officiating in the High Court), which will be found in G. O., 11th March, 1879, No. 494, Judicial Department. It met with the approval of all the Judges then present in the Court, of Mr. Justice Muthusami Aiyar (pp. 3, 4, 10—14), then in the Small Cause Court, and of Sir Walter Morgan (pp. 14—16).

'22. The present Chief Justice has more than once pressed its adoption on the Government—G.O.s, 27th May, 1879, No. 1247, and 8th October, 1880, No. 2425, Judicial Department.

'23. The Government of Madras recommended the measure and deprecated the rejection of the proposal when the Small Cause Court Act was under amendment—G. O.s, 2nd November, 1880, Nos. 2623 and 2624, Judicial Department.

'24. The Court was not informed of the grounds on which the Government of India regarded the proposal as inexpedient. The only objection which was mentioned to the Chief Justice by Mr. Stokes was that he doubted whether the same Judge could, with equal efficiency, exercise Small Cause Court and ordinary jurisdictions. The Court is not without experience that this objection is untenable. For some years the Subordinate Judges and Munsifs in this Presidency have exercised both jurisdictions, and the Court has not seen any reason to think that the exercise of the one has prejudiced the exercise of the other.

'25. It is believed that the objections proceeded from other High Courts. If this be so, it is suggested that an Act should be passed empowering the Local Government to

confer the jurisdiction on the Small Cause Court in this city, and that its working should be first tested in Madras.'

"This letter shows, among other things, that the proposals emanated from the High Court and were unanimously approved by all the Judges in 1879 and again by another set of Judges in 1885. They were further referred to, as having been deliberately adopted, in a letter dated 3rd March, 1887—after a sketch Bill had been submitted to the Chief Justice by the Hon'ble Mr. Ilbert—and in another letter written by the Registrar as recently as 12th November, 1889; and, notwithstanding what was written last September, I believe that, as now formulated, they will again be generally approved by the full Court. The Local Government has throughout given the measure its warm support. I may refer to, but I will not stop to quote, its letters dated 14th May, 1887, 21st December of the same year, 2nd June, 1888, and 16th March, 1889. In the last letter His Excellency in Council urged the importance of expediting the measures required to effect the transfer, as otherwise 'even six Judges may not be able to keep down the arrears without relief.'

"Lastly, in order that we might be quite sure that we were not going beyond what was locally recognized to be desirable, before laying the matter before the Secretary of State we took the precaution of asking for the views of the mercantile community. The members of the Trades Association were 'unanimously of opinion that the change proposed would afford great relief to the High Court, and be beneficial and a great convenience to suitors.' The Chamber of Commerce approved of the proposals, 'provided the services of the sixth Judge are not dispensed with until it is satisfactorily established that the relief afforded by the proposed change will reduce the work of the High Court to dimensions that can be efficiently dealt with by a smaller number of Judges than six.' As to this proviso, I have only to say that both the Government of India and the Local Government recognize their obligation to provide a sufficient staff of Judges, and there is no intention whatever to dispense with the sixth Judge, *i.e.*, the fifth Puisne Judge, unless it should turn out that he is not required. Whether he will be required or not it is more than I or any one else can assert with any degree of confidence. All that I am inclined to insist on is that a single Judge ought to be able to dispose of all the important original work of the Presidency-town, and this would leave all the other Judges free for the undoubtedly heavy appellate business.

"My Lord, I am not in the habit of noticing attacks by anonymous contributors to newspapers; but, as I have been more than once lately denounced by name in connection with this measure as an insidious enemy of Madras, and of

the High Court and the sixth Judge in particular, I may perhaps be permitted to take this opportunity to mention that this Bill merely embodies proposals which I made when I was myself in the High Court and expected to remain there, and that the present existence of a sixth Judge is more due to my own personal efforts, undertaken after I had quitted the Court, than to anything else I am aware of. All that can truly be laid to my charge is that I do not regard the original civil jurisdiction of the High Court as a fetish which it would be sacrilegious to interfere with in the smallest degree, and that I consider that the interests of the Bar must give way when they come into conflict with the interests of the suitor and the public tax-payer. The Bar, however, is but slightly affected by the Bill now in question, as may be gathered from the letter of 1885 which I have quoted almost in full. All the pettier suits of the original side are already conducted by vakils, and by far the best paying work is connected with Mufassal litigation. In this respect, as well as in other local peculiarities which I have already mentioned, Madras differs essentially from Calcutta and Bombay. Many good authorities are of opinion that some similar measure of reform is demanded for the other Presidency-towns also, but Madras has advantages which enable her to take the lead. Whether her sisters will be inclined to follow when they see how easily the proposed transfer of jurisdiction can be effected, and the good results which follow, is a question which we may well leave it to time to solve.

"My Lord, there are yet two objections with which I ought to deal before I bring this long speech to an end. The first is that the addition of this new business will make the Court of Small Causes less efficient for the primary purpose for which it was created, namely, the summary recovery of simple debts. The High Court's letter of 1885 dismissed this difficulty as untenable by showing that almost every Court in the Madras Presidency has its two sides, for the disposal of regular suits and small causes respectively, and that no practical inconvenience has resulted. The only fact brought forward to show that the summary work may have been delayed is that the average duration of a small cause suit in the Presidency Court is less by ten days than the similar average for all the Mufassal Courts. Those who made this comparison appear to have overlooked the wide extent of the territorial jurisdiction possessed by Mufassal Courts. It will often take much more than ten days to get a summons served on a defendant and returned to the Court, and reasonable time must of course be allowed to a distant party to put in an appearance. Besides, in the Mufassal there is but one Judge for both sides of the Court, and the rule is for him to take only two days in each week for small causes. In the Presidency Court the two sides will be absolutely and entirely distinct, and the only outward and visible signs that the regular

side is part of the Small Cause Court will be, first, that it will be styled 'the Court of Small Causes, Regular Side,' and, secondly, that the presiding Judge will be one or other of the Judges appointed to the Small Cause Court. I have already dwelt on the advantages of such an elastic arrangement. The Chief Justice of the High Court does not appear to have any difficulty in deciding how many or which Judges should be deputed to the original side or the appellate side, as the case may be, or in determining their relative claims to consideration from time to time. The two sides of the Small Cause Court will be every whit as distinct, and the Chief Judge will have exactly the same power to make arrangements. As to the efficiency of the Judges, I need only point out that, supposing their number to be four or five, two must be Advocates of the High Court, while the others have hitherto been the pick of the Subordinate Judges, as good a body of judicial officers as can be found anywhere.

"Lastly, it has been urged that the work of the High Court will not really be decreased, because, if it is saved original trials, it will get more appeals. The weighty authority of Sir Henry Maine has been called in aid of this objection, but after all his arguments are either *à priori*, or at all events they do not take into account the actual facts at Madras. We will suppose 200 suits to be transferred, and that appealable decrees are passed in 100. The average percentage of appeals from appealable decrees of the Mufassal Courts is 12, but we will allow 20. Now, bearing in mind that what takes up most time in Court is the recording of evidence, and that the record is complete before an appeal comes on for hearing, about 6 appeals may be heard in the time which 1 original suit will occupy. We will, however, reduce this number to 4 only. Thus, 20 appeals would take as long as 5 original suits. This is just one-twentieth of the business which I have supposed to be transferred, without making any allowance for the interlocutory work connected with the other 100 suits not disposed of on the merits. I have not lost sight of the fact that two Judges sit together on an Appellate Bench, but I set it against another fact, *viz.*, that at least 10 per cent. of the appealable decrees passed by High Court Judges are already appealed.

"I regret, My Lord, that I have encroached so much on the time of this Hon'ble Council, but the matter is one on which the public of Madras is naturally interested, and on which it has not hitherto enjoyed full information. I trust I have now succeeded in making it sufficiently clear, and at all events that I shall no longer be suspected of entertaining any insidious designs to their disadvantage."

The Motion was put and agreed to.

The Hon'ble SIR PHILIP HUTCHINS also introduced the Bill.

The Hon'ble SIR PHILIP HUTCHINS also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Fort St. George Gazette in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

INDIAN CHRISTIAN MARRIAGE ACT, 1872, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill to validate certain marriages solemnized under Part VI of the Indian Christian Marriage Act, 1872, which was introduced and ordered to be published at the last Meeting of the Council, be referred to a Select Committee consisting of the Hon'ble Sir Philip Hutchins, the Hon'ble Mr. Rattigan and the Mover.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 6th August, 1891.

S. HARVEY JAMES,

Secretary to the Government of India,
Legislative Department.

SIMLA;
The 24th July, 1891.

D

G. C. Press, Simla.—No. 162 L. D.—24-7-91.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 6th August, 1891.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of the Punjab, K.C.S.I.
His Excellency the Commander-in-Chief, BART., V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Sir P. P. Hutchins, K.C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble Sir A. E. Miller, KT., Q.C.
The Hon'ble Lieutenant-General H. Brackenbury, C.B., R.A.
The Hon'ble Colonel R. C. B. Pemberton, R.E.

INDIAN MERCHANT SHIPPING ACT, 1880, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR presented the Report of the Select Committee on the Bill to amend the Indian Merchant Shipping Act, 1880.

MADRAS SMALL CAUSE COURT BILL.

The Hon'ble SIR PHILIP HUTCHINS moved that the Bill to extend the jurisdiction of the Court of Small Causes of Madras be referred to a Select Committee consisting of the Hon'ble Sir Alexander Miller, the Hon'ble Mr. Rattigan and the Mover.

The Motion was put and agreed to.

PUNJAB MUNICIPAL BILL.

The Hon'ble SIR PHILIP HUTCHINS also moved for leave to introduce a Bill to make better provision for the administration of Municipalities in the Punjab. He said:—

"As the hon'ble member (Mr. Rattigan) whom Your Excellency has lately appointed to represent the Punjab has not yet taken his seat, it devolves upon me to move for leave to introduce this Bill.

[*Sir Philip Hutchins.*] [6TH AUGUST,

"The law which at present governs the municipalities of the Punjab was enacted in 1884 at a time when a general extension of local self-government was taking place throughout India. It was therefore naturally framed upon a far more elaborate and ambitious model than the former Municipal Act of 1873. The older law was not indeed at that time expressly repealed except in regard to those municipalities to which the new law was specifically extended. But the practical inconvenience of two independent municipal systems in one Province was too great for continuance. The Act of 1884 was speedily extended to all the municipalities then in existence, while no new municipality was ever constituted under the Act of 1873. The latter Act thus fell into complete desuetude; but it was only finally repealed a few months ago by the Obsolete Enactments Act, No. XII of the present year.

"Since August, 1884, therefore, Act No. XIII of 1884 has been in practice the sole municipal law of the Punjab, and an experience of six years has discovered some faults in its operation and some deficiencies in its provisions. Both the faults and the deficiencies are probably due to the very great difference of condition which exists among the various municipalities of the Punjab, and to the extreme difficulty of framing any single enactment which shall be appropriately fitted to the various circumstances of them all. On the one hand, there are large and growing commercial centres, such as Amritsar and Delhi, with a great and intelligent population, with adequate resources, and with large and growing municipal wants and requirements. On the other hand, there are numerous country-towns with a small population which hardly affords material for a municipal administration even of the simplest description. These towns have practically no conception of municipal life on a large scale. Their resources are narrow, and their wishes correspond with their powers. Lastly, apart from both these classes are the various hill-stations, peculiar in their physical situation, the character and habits of their population and the special needs and expectations which follow from these peculiarities.

"Even this enumeration by no means exhausts the differences of condition among the Punjab municipalities, but it sufficiently indicates the difficulties of the case. To some extent these difficulties are recognised in the existing Act by the division of municipalities into two classes, and by the power given to except individual municipalities from the operation of particular provisions of the law. But these arrangements, though salutary in themselves, are insufficient and often hard to apply in practice. The fact remains that there is at present no adequate method by which municipal committees can deal with many matters which either

now require, or may shortly require, regulation in the more highly civilized communities, as well as at the hill-stations. At the same time, on the other hand, the apparatus of administration is unnecessarily cumbrous for the smaller towns, and there is naturally some reluctance to bring under so elaborate a system those small townships which are not at present municipalities but in which it is desirable to provide at least some measures of rudimentary sanitation and perhaps also some arrangement for local watch and ward.

"Acting upon these considerations the Punjab Government resolved to undertake an amendment of the municipal law. Their proposals were embodied in a draft Bill recently submitted to the Government of India. Almost everything that is new in the Bill which I am about to ask leave to introduce is taken from this draft or from supplementary suggestions made subsequently by the Local Government. But if the Bill had been passed merely as an amending Act the result would have been to spread the municipal law of the Province over two separate enactments, and this seemed an undesirable arrangement in regard to municipalities in which the law has to be administered by men who have often no legal training and for whom it is therefore expedient to supply a single enactment in as lucid and compact a form as possible. It has therefore been decided (with the full assent of my hon'ble friend the Lieutenant-Governor of the Punjab) to repeal the existing Municipal Act and to re-enact it with the alterations and additions recommended in the original draft amending Bill. This decision has swollen the Bill now in my hands to very formidable dimensions. But, though rather alarming to look at, it in reality consists for the most part of what is already law and has been law since 1884. What is new is of no great compass, involves no large matter of principle, and merely deals with a number of details of municipal administration. Some of these details have a certain amount of importance, while others are more or less insignificant. I will not weary the Council with a detailed enumeration of the changes which have been made or of the reasons for them. Both will be found fully set out in the Statement of Objects and Reasons annexed to the Bill. But I think that all the new proposals can be conveniently distributed into three groups, and it will perhaps be desirable for me to indicate the character of each group and of the more important items comprised in it.

"In the first place, there are a number of sections which grant new or enlarged powers to committees or in connexion with municipal administration. Some of these are expressly confined to municipalities at hill-stations. Such are the powers to make rules to license porters and hired horses given by section 145. Other powers—such as those given by section 93 for the regulation of building—

though not expressly confined to hill-stations, are not likely in practice to be applied elsewhere. The remaining important sections of this type are those which give increased power of control over petroleum and similar inflammable materials (105 and 120), that which gives power to regulate by rule the places in which food and drink may be manufactured for sale or sold (137), those which endeavour to reduce the danger from the malignant diseases of cholera and small-pox (140-143), those which provide for the establishment of fire-brigades (Chapter VIII), and lastly the section which provides for the control of houses of ill-fame (203). In all the more important of these matters the committees will exercise their powers under somewhat strict control from Government, and additional precautions are provided in two ways in regard to all matters which appear to involve any interference with individual habits or industry. In the first place, the various sections will not operate in any municipality unless specially extended thereto, and, in the second place, no such extension will be possible unless specially applied for by the committee. There seems therefore no ground for apprehension either that the committees will abuse their powers or that measures of advanced administration will be thrust upon an unwilling population without its own consent. I may mention that the provision for the control of houses of ill-fame was inserted in the Bill by the Local Government in compliance with the prayer of a petition from Lahore bearing numerous and influential signatures.

"The second group of amendments to which I would refer comprises all those sections which attempt to make municipal administration in general less cumbrous and more efficient. It would be tedious to enumerate these, and were I to attempt the task I could do little more than recapitulate the Statement of Objects and Reasons. Among them will be found provisions to facilitate the change from an appointed to an elected or from an elected to an appointed committee. There are also provisions for decentralizing the administration of the smaller municipalities by delegating some of the functions of the Local Government in regard to them to Commissioners. Other sections of the Bill are intended to simplify the imposition and remission of taxation, and to make better provision for appeals against assessments. The provisions of the existing law as to house-scavenging (which have proved unworkable in practice) have also been thoroughly reformed. Larger powers of control have been given over certain classes of municipal servants. And, lastly, power has been taken to compound offences against municipal byelaws and to make prosecutions for such offences much simpler and more speedy than under the present law.

1891.] [*Sir Philip Hutchins.*]

"The third and last group of changes is that contained in the last chapter of the Bill. There are a good many places in the Punjab, of which Kalka may be mentioned as a good instance and one familiar to hon'ble members, which are clearly not fitted for municipal government, but which nevertheless require some adequate arrangements for conservancy or for police or for both. At present such townships can only be dealt with under Act No. XX of 1856, which is an inconvenient, and in some respects an obsolete, enactment. Chapter XI of the present Bill endeavours to supply a simple regulation for places of this description. Under its provisions it will be possible in several small towns to provide at least some rudimentary measure of public cleanliness, and in process of time, as resources develop, such towns may be gradually elevated to full municipal rank.

"The remaining changes introduced by the Bill are not of much importance. They deal mainly with elucidations of doubtful points in the present law, or with the regulation of minor practical details. I do not think I need detain the Council with any account of these."

The Motion was put and agreed to.

The Hon'ble SIR PHILIP HUTCHINS also introduced the Bill.

The Hon'ble SIR PHILIP HUTCHINS also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Punjab Government Gazette in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 20th August, 1891.

S. HARVEY JAMES,

Secretary to the Government of India,
Legislative Department.

SIMLA;
The 7th August, 1891.

G. C. Press, Simla.—No. 191 L. D.—7-8-91.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 20th August, 1891.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
His Excellency the Commander-in-Chief, BART., V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Sir P. P. Hutchins, K.C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble Sir A. E. Miller, KT., Q.C.
The Hon'ble Lieutenant-General H. Brackenbury, C.B., R.A.
The Hon'ble Colonel R. C. B. Pemberton, R.E.

INDIAN MERCHANT SHIPPING ACT, 1880, AMENDMENT (DECK AND LOAD-LINES) BILL.

The Hon'ble SIR DAVID BARBOUR moved that the Report of the Select Committee on the Bill to amend the Indian Merchant Shipping Act, 1880, be taken into consideration. He said :—

"It will be recollected that, when introducing this Bill on 19th December last, I pointed out that its object was to assimilate the Indian to the English law in regard to maximum load-lines, and that it had been rendered necessary by the changes in the English law made by the English Merchant Shipping Act of 1890

"As the questions dealt with in the Bill were of a highly technical character, a copy of the Bill, as introduced in December last, was forwarded through the Secretary of State for India to the Board of Trade for examination and for any suggestions for the amendment of the Bill which the Board might wish to make.

"The Board of Trade has no objection to the Bill as introduced and makes no suggestion for its amendment. There is no higher authority on this subject than the Board of Trade, and it is therefore not necessary for me to do more at

the present time than briefly explain the chief modifications which the Select Committee now suggests.

"In the Bill as amended by the Select Committee it is provided that Colonial marks relating to deck and load-lines which are recognized in England shall also be recognized in India, and that foreign ships shall be brought under the operation of the law, as they are in England, unless the countries to which they belong have laws on the subject of deck and load-lines which are recognized as equally effective with the English or Indian law. In both these respects the Select Committee merely proposes to follow the English law and practice.

"The Select Committee recommends that power be given to Local Governments to exempt Native craft, not square-rigged, from the operation of the law; even the existing rules under Act VII of 1880 as regards the marking of vessels have not been applied to vessels of this class, and the English deck and load-line law, as altered in 1890, cannot fairly be made applicable to them Power is also given to make rules, with the previous sanction of the Governor General in Council, for the definition of fair and foul seasons and for the modification of the tables of free board in the case of any class or classes of vessels. It is intended by this provision to enable Government to deal from time to time with vessels in the coasting or purely Eastern trade to which the rules of the Board of Trade cannot be applied in their full integrity."

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

PUNJAB MUNICIPAL BILL.

The Hon'ble SIR PHILIP HUTCHINS moved that the Bill to make better provision for the Administration of Municipalities in the Punjab be referred to a Select Committee consisting of the Hon'ble Sir Alexander Miller, the Hon'ble Mr Rattigan and the Mover, with instructions to report within one month.

The Motion was put and agreed to.

1891.] [*Sir Philip Hutchins.*]

LOWER BURMA MUNICIPAL BILL.

The Hon'ble SIR PHILIP HUTCHINS also moved for leave to introduce a Bill to amend the Lower Burma Municipal Act, 1884. He said :—

"A fortnight ago I had the honour of bringing before this Council a Bill revising the Municipal Law now in force in the Punjab. I have now to ask leave to introduce a Bill to amend in some few respects the Lower Burma Municipal Act of 1884. The former was a lengthy measure comprising upwards of two hundred sections; the Bill which I now hold in my hand contains five sections only. The Punjab too is our westernmost province, and is probably not more remote from Burma in situation than it is divergent from it in manners and customs, in social habits and municipal requirements. Nevertheless these two measures have a good deal in common, and, with Your Excellency's permission, I shall presently move that they be referred to the same Select Committee. I shall also, in the Home Department, draw the special attention of the Chief Commissioner of Burma to the sections in the Punjab Bill corresponding with those in the Bill which he has prepared for his own province, and ask him to consider whether they may not be more closely assimilated.

"The principal sections in the Bill which I am about to place on the table are the first and the last two, which may be taken together. In 1888 the municipal committee of Rangoon introduced into the town the hydro-pneumatic system of drainage by gravitating sewers which is known as the Shone system. A portion of the works was opened in this month of August two years ago, and the whole system was completed in April, 1890. It has been in working order for a considerable time in part of the town, but the municipality have not been able to discard even in that part the old and highly insanitary and objectionable method of removing fæcal matter by carts, because many of the inhabitants have neglected to connect their houses with the sewers. Consequently the municipality have to maintain two systems of night conservancy at a heavy cost. In order to compel house-owners to establish the necessary connections, one of them was prosecuted under section 115 of the Municipal Act for allowing offensive matter to flow or be put into a drain not set apart by the committee for that purpose. He was convicted, but the learned Recorder of Rangoon has quashed the conviction on three grounds, namely, (1) that the Act gives no power to compel house-owners to make such connections, (2) that, even if it did, the committee could not compel them to trespass on intervening Government land in order to effect the connections, and (3) that under section 115 only the person

who has actually permitted the sewage to flow where it should not is liable to prosecution. Sections 1, 4 and 5 of my Bill have been framed to meet these several objections. It is evidently of vital importance, alike to the health of the town and to the financial position of the municipality, that the necessary connections should be completed as early as possible, and I cannot anticipate that there will be any objection to this, which I have described as the main, portion of the measure.

"Although these amendments are intended primarily for Rangoon, yet, as they only add to without otherwise changing the Act of 1884, they will be made applicable to the whole of Lower Burma. Their effect is merely to give to a municipal committee the same amount of control over sewage-works and their appurtenances which they already possess over drainage-works, privies and cess-pools, and also the power of compelling the construction of proper drains. Such control and such power ought to be vested in every municipal committee.

"The second section of the Bill will authorize all municipal committees in Lower Burma to tax vehicles and animals entering the municipality. I think such taxation is specially permitted by almost every other Municipal Act in force in any part of India. It could be imposed even in Burma in any particular municipality with the previous sanction of Your Excellency in Council, but there is no real reason for requiring such special sanction in every case in which a tax of this ordinary character seems desirable. At present vehicles and animals are only liable to be taxed when they are kept within municipal limits, and the liability is frequently evaded by sending them to stables just outside those limits.

"The third and only remaining section of the Bill has been framed with a view of giving greater control over the erection of buildings on land belonging to Government or to a municipality. The existing section for which it provides a substitute was copied from section 88 of the Punjab Act, a section which it has been proposed to alter very materially even for the Punjab by the Bill introduced at the the last sitting of Council. In Rangoon there is much waste land unreclaimed from swamp and not at all fit for occupation by human habitations. There is also a good deal of ground belonging to Government, which charges rent for the privilege of building. It seems that the more ignorant classes regard a municipal permit to build as equivalent to a grant of the site. The less scrupulous run up such wooden houses as are common in Burma, without the knowledge of the revenue-officers, and it is impossible to eject them without a regular suit. The Chief Commissioner expects that the new section will obviate much misunderstanding and inconvenience, but, as I have already

stated, I shall ask him to compare its provisions very carefully with those which it is proposed to insert in the Punjab enactment."

The Motion was put and agreed to.

The Hon'ble SIR PHILIP HUTCHINS also introduced the Bill.

The Hon'ble SIR PHILIP HUTCHINS also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Burma Gazette in English and in such other languages as the Local Administration thinks fit.

The Motion was put and agreed to.

The Hon'ble SIR PHILIP HUTCHINS also applied to His Excellency the President to suspend the Rules for the Conduct of Business, to enable him to move for the appointment of a Select Committee to consider the Bill. This, he explained, would save a special meeting of Council being called for this merely formal purpose.

THE PRESIDENT declared the Rules suspended.

The Hon'ble SIR PHILIP HUTCHINS then moved that the Bill be referred to a Select Committee consisting of the Hon'ble Sir Alexander Miller, the Hon'ble Mr. Rattigan and the Mover, with instructions to report within one month.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 10th September, 1891.

S. HARVEY JAMES,

Secretary to the Government of India,
Legislative Department.

SIMLA;
The 21st August, 1891.

G. C. Press, Simla.—No. 218 L. D.—21-8-91.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 17th September, 1891.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M S.I., G.M.I.E., *presiding*.

His Excellency the Commander-in-Chief, BART., V.C., G.C.B., G.C.I.E., R.A.

The Hon'ble Sir P. P. Hutchins, K.C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble Sir A. E. Miller, KT., Q.C.

The Hon'ble Lieutenant-General H. Brackenbury, C.B., R.A.

The Hon'ble Colonel R. C. B. Pemberton, R.E.

The Hon'ble W. H. Rattigan, M.A., LL.D.

BANKERS' BOOKS EVIDENCE BILL.

The Hon'ble SIR ALEXANDER MILLER presented the Report of the Select Committee on the Bill to amend the Law of Evidence with respect to Bankers' Books. He said:—

"The Select Committee have made several considerable changes in detail, but none which, I think, affect the principle of the Bill, or which would require further consideration or republication. The alterations are briefly these. Instead of the elaborate machinery proposed in the Bill, in which it is to be proved by a system of affidavits that the books were examined and the extracts verified, we propose to introduce a system of certified copies, exactly analogous to that in the present law in respect to certified copies of public documents, and we do not propose to permit any evidence to be given otherwise than by the production of the books themselves, or by certified copies. We were asked to extend the Act to all kinds of mercantile concerns, but that was not thought desirable. We have omitted all reference to Government Savings Banks and to the Post Office, because we think that the books of these bodies are 'public documents' within the meaning of the Evidence Act. We have, however, introduced a clause enabling the Local Government in any case to extend the provisions of the Act to the books of any company which keeps a regular set of books analogous to the recognized bankers' books and to which the Local Government may consider it desirable to extend them. We have also introduced provisions enabling

the bank, if it thinks fit, to offer to produce certified copies instead of allowing its books to be examined. We thought there might be very good reasons for this course, and that in the interests of the bank or its clients the clause which proposed to enable any party to obtain authority to look through the books of the bank was undesirable without this modification. Instead therefore of this being done, we propose that the bank may offer to give copies of the necessary certificates. There is one point in connection with this matter, which is that we propose, in that case, that the bank should have to certify that it has given all the relevant entries. One of the District Judges has made a note to the effect that it is impossible for a bank to judge what entries are, or are not, relevant. The answer is that the bank is not bound to take advantage of this provision. If for the purpose of concealing its accounts it chooses to take advantage of it and does not insert all relevant entries, it must act on its own responsibility and at its own risk.

"We have inserted no clause with reference to the payment of any fee to a bank for the supply of certified copies, but we have given a discretionary power to the Court, where the matter comes before it, to award costs to or against the bank as it may think just; and the reason is that we think that in most cases it would be more beneficial to the bank to give these certificates free of cost than to have their books produced, and possibly detained for days, or even weeks, for purposes of legal proceedings; but if in any case the bank does not choose to grant these certified copies without payment the party will have it in his own power either to pay what the bank asks, or to go before the Court and get an order. Probably in many cases an agreement with the bank would be come to in preference to going before the Court, but if the matter does go before the Court, then we give the Court complete power to make any order which it thinks proper as to costs for or against the bank.

"The Bill does not contain any express power to the Court to require the production of the books, instead of acting on the certified copies. I think this power is given incidentally, because we say that these certified copies shall be received as *primâ facie* evidence of the existence of the entries, and also that no officer of a bank shall in any proceedings to which the bank is not a party be compelled to produce the books without special order; but I am not quite sure that it may not be desirable to insert a clause to the effect that notwithstanding anything in the Act the Court may order the production of the books themselves whenever it thinks this necessary.

"I do not think there is anything else which calls for remark."

PUNJAB MUNICIPAL BILL

The Hon'ble MR. RATTIGAN moved that the presentation of the Report of the Select Committee on the Bill to make better provision for the administration of Municipalities in the Punjab be postponed till the next meeting of Council. He regretted that it had not been found possible to present the Report of the Select Committee at the present meeting. A large number of opinions had been received only very recently, and owing also to the pressure of other business the members of the Select Committee had not been able to meet up to the present time. The Committee would, however, begin its meetings to-morrow, and he thought he could undertake that the Report would be placed upon the the table at the next meeting of the Council.

The Motion was put and agreed to.

LOWER BURMA MUNICIPAL ACT, 1884, AMENDMENT BILL.

The Hon'ble SIR PHILIP HUTCHINS moved that the presentation of the Report of the Select Committee on the Bill to amend the Lower Burma Municipal Act, 1884, be also postponed till the next meeting of Council. He said that when he introduced the Bill he explained that, as far as it went, it had a great deal in common with the Punjab Bill; the two Bills had been referred to the same Committee, and he thought it desirable that they should be dealt with together.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 1st October, 1891.

L. PORTER,

SIMLA; *The 18th September, 1891.* } *Offg. Secretary to the Government of India, Legislative Department.*

Note.—The Meeting fixed for the 10th September, 1891, was subsequently postponed to the 17th idem.

G. C. Press, Simla.—No. 296 L. D.—21-9-91.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 1st October, 1891.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of the Punjab, K C.S.I.

His Excellency the Commander-in-Chief, BART., V.C., G.C.B., G.C.I.E., R.A.

The Hon'ble Sir P. P. Hutchins, K.C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble Sir A. E. Miller, KT., Q.C.

The Hon'ble Lieutenant-General H. Brackenbury, C.B., R.A.

The Hon'ble Colonel R. C. B. Pemberton, R.E.

The Hon'ble W. H. Rattigan, M.A., LL.D.

BANKERS' BOOKS EVIDENCE BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Report of the Select Committee on the Bill to amend the Law of Evidence with respect to Bankers' Books be taken into consideration.

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

PUNJAB MUNICIPAL BILL.

The Hon'ble MR. RATTIGAN presented the Report of the Select Committee on the Bill to make better provision for the administration of Municipalities in the Punjab.

He said that, following the practice which he believed prevailed on such occasions, he proposed to reserve any remarks which he would have to make upon the Bill itself till the next meeting of the Council, when, with His Excellency the President's permission, he hoped to move for the Bill to be taken into consideration.

LOWER BURMA MUNICIPAL ACT, 1884, AMENDMENT BILL.

The Hon'ble SIR PHILIP HUTCHINS presented the Report of the Select Committee on the Bill to amend the Lower Burma Municipal Act, 1884. He said:—

"I shall ask at the next meeting of Council that this Bill be taken into consideration and passed, and I propose to reserve till then such observations as I have to make on the Bill as it stands. I think, however, that I ought to give notice of two amendments that I shall probably have to move.

"One of them is purely formal. The proviso to sub-section (*3*) of the last section of the Bill applies equally to sub-section (*4*), which is dependent on sub-section (*3*), and this ought to be expressed.

"I shall also, in all probability, have to move for the addition to the Bill of those clauses in the Bill in charge of my hon'ble friend Mr. Rattigan which are designed to prevent strikes or desertion of their duties on the part of sweepers, as well as of other classes of municipal servants, the due performance of whose functions is essential to the public health or safety. The necessity for some such provision has been brought home to me by a telegram which has just arrived from the Chief Commissioner of Burma, reporting that the sweepers employed by the Rangoon Municipality have struck work and that serious consequences are anticipated."

UPPER BURMA LAWS ACT, 1886, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved for leave to introduce a Bill to amend the Upper Burma Laws Act, 1886. He said:—

"It appears that certain duties of certain officers were defined by the Upper Burma Village Regulation, 1887, and that under that Regulation their position is that of a petty Magistrate, whereas under the Burma Laws Act, 1886, they seem to be treated as Police-officers. They are subjected to a good deal of petty annoyance in consequence, and it is desirable to remove the cause of it."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also introduced the Bill and moved that it be taken into consideration. He explained that the Bill consisted practi-

cally of a single section and simply repealed the section of the Burma Laws Act which he had just mentioned.

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill be passed.

The Motion was put and agreed to.

INLAND EMIGRATION ACT, 1882, EXTENSION BILL.

The Hon ble SIR PHILIP HUTCHINS moved for leave to introduce a Bill to provide for the extension of the Inland Emigration Act, 1882. He said:—

"The reasons which have induced me to bring forward this measure are set out in the Statement of Objects and Reasons attached to the Bill.

"It is very desirable to open up a further field for the supply of coolie labour, in the interest not only of the districts requiring the labour but also of the immigrants themselves; and it is believed that such a field can be found to advantage in the Central Provinces. The Chief Commissioner has agreed to the Act being extended to his territory.

"In the Madras Presidency labourers for Assam are even now recruited under a local Act in the districts of Ganjam and Vizagapatam, and some two years ago the Local Government expressed a wish for legislation which will admit of Act I of 1882 being put into force in suitable portions of that Presidency.

"It is not possible to extend the Act at once to all parts of the Presidency of Madras, because it would be in conflict with a local Act which prohibits the recruiting of Madrasis except under its own provisions. And it is not likely that the Imperial Statute will be applied beyond the limits of those two districts from which emigration to Assam even now takes place. In these circumstances it seems best to allow the Local Government to apply the Act to such localities as they think fit, and at the same time they will probably repeal their local enactment so far as those areas are concerned

"Such other observations as I have to make upon the Bill I will reserve till the next meeting of the Council, when I hope to move that it be taken into consideration and passed."

The Motion was put and agreed to.

[*Sir Philip Hutchins.*] [1ST OCTOBER, 1891.]

The Hon'ble SIR PHILIP HUTCHINS also introduced the Bill.

The Hon'ble SIR PHILIP HUTCHINS also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India, the Fort St. George Gazette and the Central Provinces Gazette in English.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 8th October, 1891.

L. PORTER,

SIMLA; *The 2nd October, 1891.* } *Offg. Secretary to the Government of India, Legislative Department.*

G. C. Press, Simla.—No. 339 L. D.—2 10-91.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 8th October, 1891.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of the Punjab, K.C.S.I.

His Excellency the Commander-in-Chief, BART., V.C., G.C.B., G.C.I.E., R.A.

The Hon'ble Sir P. P. Hutchins, K.C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble Sir A. E. Miller, KT., Q.C.

The Hon'ble Lieutenant-General H. Brackenbury, C.B., R.A.

The Hon'ble Colonel R. C. B. Pemberton, R.E.

The Hon'ble W. H. Rattigan, M A., LL.D.

PUNJAB MUNICIPAL BILL.

The Hon'ble MR. RATTIGAN moved that the Report of the Select Committee on the Bill to make better provision for the administration of Municipalities in the Punjab be taken into consideration. He said:

"I do not think there is any need for me to enter at any length into the past history of legislation on this important subject. The whole circumstances which had rendered fresh legislation necessary were fully explained by my hon'ble friend Sir Philip Hutchins, who acted as sponsor for the Bill on the occasion when it was introduced, and so short a time has since elapsed that it is quite unnecessary for me to follow him upon those points.

"But as the Member who more particularly represents the province that will be affected by the Bill, if it becomes law, I would desire, with Your Excellency's permission, to make the following observations, which will, I hope, serve to explain the general scope and character of the alterations which the present Bill makes in the existing law regulating municipalities in the Punjab.

"In order, however, to make hon'ble members more readily comprehend these alterations, it will be necessary for me to refer here to the defects of the existing law, though I shall endeavour to do so as briefly as possible.

"That law, as hon'ble members are aware, is embodied in Act XIII of 1884. But this enactment, although intended to make better provision for the organisation and administration of municipalities in the Punjab, did not by express words repeal the former Act, IV of 1873, which was allowed to prolong an obsolete existence for nearly seven years, until Act XII of 1891 acted the part of its executioner and finally caused its formal removal, along with much other 'dead matter,' from the Indian statute-book by the painless process of a statutory extinction.

"An experience extending over the same period has, however, proved that the Act of 1884, which superseded that of 1873, is itself not fully adapted to meet all the widely different requirements of municipalities in this province. These bodies are found to vary largely in type, representing communities no larger than good sized villages and capital cities, once the seat of empire, like Delhi and Lahore,

'whose game was empires, and whose stakes were thrones'.

"They differ naturally in all the main elements of their constitution, in their capacity for local government, in their special needs and resources, and in certain other marked local conditions; and no law regulating their proceedings and powers can be effectively applied which is not distinguished by great clearness of language and extreme simplicity of procedure, as well as by a judicious mixture of definiteness in principle with elasticity in details. The framers of Act XIII of 1884 were by no means unmindful of these peculiarities of municipal administration in a large province like the Punjab, the people of which are far more educated and advanced in some parts than in others, and an attempt was made to meet the difficulty by dividing municipalities into two broad classes, and by giving the Local Government the power to except any municipality from any of the provisions of the Act if they were deemed unsuitable thereto. But even with these devices the current of municipal administration has not been found to run smoothly, while there are a number of small towns in which it is desirable to introduce some regulations, for sanitary and other purposes, affecting the comfort, health and safety of the inhabitants, but in respect to which it is quite impossible to apply the somewhat cumbrous provisions of an Act like XIII of 1884. That Act was admittedly a compromise between divided opinions, and the then Lieutenant-Governor of the Punjab did not hesitate to say in Council that the form in which the Act was passed was not in all respects what he desired. But the hope was nevertheless entertained—a hope common to legislative efforts at all times—from Theodosius to Napoleon—but a hope in each

instance doomed to early disappointment—that the Act then passed had solved the difficulty of regulating municipal government in the Punjab. A comparatively short existence of seven years has dispelled the illusion, and it is now admitted on all hands that the Act of 1884 has been found inadequate. Too intricate for the wants of smaller towns, not wide enough in its scope to meet the growing requirements of large cities and hill municipalities like Simla, and defective in matters relating to control, prevention from fire, restraint of infection, and regulation of manufacture, preparation and sale of food and drink, an amendment of the law was urgently called for.

"In this condition of things there were two possible courses open to the Government, namely, either to give each municipality a law of its own, or to recast, simplify, and so amend the existing law as to give it greater flexibility and elasticity, and thus bring it into a more general workable condition. From the point of view of the draftsman, the former course would have presented by far the less difficulty, but there were obvious objections to this course, since the multiplicity of laws it would have introduced would have created confusion and rendered the task of efficient control on the part of the Local Government one of almost insuperable difficulty. There remained therefore only the alternative course, and in adopting the latter it was also decided that the opportunity should be taken of enlarging the powers of municipal bodies in the direction where experience had shown such a step to be necessary, of giving greater facilities for the prosecution of offences under the Act, of vesting such powers of control in the Local Government as would ensure the due performance of their duties by municipalities, of simplifying the imposition and remission of taxation, and, lastly, of introducing a simple regulation for such small townships as were not fitted for the full privileges of municipal government, but in respect to which some adequate statutory sanction was required to deal effectively with questions of conservancy and watch and ward. It was upon these lines that the Bill as introduced was framed, and it is upon these identical lines that its provisions have been subjected to fresh revision at the hands of the Select Committee. In its present form it is hoped that the Bill will be found to realise its objects, and to commend itself to the favourable consideration of the Council.

"No changes in principle have of course been introduced in the revised Bill, and for this reason, and because it was very necessary that this important piece of legislation should be completed during the present sitting of Council, at which His Honour the Lieutenant-Governor of the Punjab could be present and afford the Council all the benefit of his vast experience and knowledge of the requirements

of his province, it has not been thought necessary to re-publish the Bill. The Select Committee has not, however, hesitated to simplify throughout the wording of the sections in the original draft and to re-arrange their order, wherever such a course appeared to be desirable and to effect an improvement in the general construction or language of the Bill. These formal alterations are fully enumerated and explained in the Report of the Select Committee, and I need not trouble the Council with any further reference to them. It will be sufficient if I notice in this place a few of the other more important alterations which have been introduced in Select Committee.

"Beginning with the first chapter of the Bill, it will be seen that we have struck out the proposed definition of animal as meaning 'any creature other than a human being' as likely to lead to some inconvenient results which were probably overlooked in the original drafting. Thus in section 100 of the Bill as introduced a very suitable provision was made with respect to the disposal of dead bodies of animals. But if the term 'animal' was to receive the interpretation given to it in the definition section, it would necessarily include rabbits, hares, game birds and poultry of various kinds ; and the carcases of all such 'animals,' although they may have been slaughtered for domestic consumption, would have been obliged to be conveyed within twenty-four hours to a place fixed by the committee for the disposal of the dead bodies of animals, or to be otherwise disposed of as the committee might direct ! Such an interference with the domestic culinary arrangements of private households was a matter which the Select Committee did not think was within the range of practical legislation. It was accordingly determined to strike out the general definition as unnecessary, and to substitute a special definition in section 100 of the Bill for the purposes of that section only, which would secure the object the Bill had in view and yet not unnecessarily deprive the inhabitants of municipal towns of the produce of their domestic farmyards.

"So again in section 52 and section 151 (now section 150) we have introduced, in the interests of the public, certain alterations which will enable the Local Government to empower any officer to hear and determine appeals under the Act, as it thinks fit. By this provision the inconvenience will be avoided which persons desirous of appealing might suffer if they were obliged, in the specified cases, to seek the Commissioner, who is usually a follower of the peripatetic school, and is seldom found, in the cold season at all events, at his head-quarters.

1891.] [*Mr. Rattigan.*]

"Similar considerations in favour of public interests have induced us to amend the provisions of clause (*g*) of section 120, which, as originally drawn, declared an order passed for the confiscation of inflammable or explosive material found in a house in excess of the authorised quantity to be 'not open to appeal.' Such a provision did not appear to be just having regard to the nature of the penalty, and we have altered it by allowing an appeal. We have likewise made provision for an appeal in the case of orders passed against agriculturists for not providing proper house-scavenging, as it did not appear to us that orders of this kind should be final in the first instance. Both these alterations have received the full concurrence of the Punjab Government.

"So also in section 104 the Select Committee has introduced certain words which it is believed will render the section less likely to operate harshly on the owners of buildings within a municipality. It is certainly very desirable that municipalities, especially those situated in hilly tracts like Simla or Murree, should have the power of prohibiting the lighting of fires in the top storey of certain buildings. Such a power is needed in the interests of the public for the prevention of fires in localities, like bazars, where buildings adjoin one another, and are of a construction which renders them easily inflammable. But at the same time the power is one that ought clearly not to be permitted to be exercised, interfering as it would do with the liberty of the subject in what would ordinarily be regarded as the legitimate use of one's own property, except in so far as it may be absolutely necessary for the protection of the public interests. To that extent only it is right and proper that the interests and liberty of the individual should be subordinated to and controlled by the larger interests of the public; and the Select Committee has endeavoured not to enlarge this general principle in the alterations it has made in the wording of this section

"Again, lovers of dogs will not perhaps regret that the Select Committee does not recommend the retention of the section empowering all dogs in streets—a term which has a wide signification in the Bill—to be muzzled during any period not exceeding six months. Such a provision may be salutary in large cities in Europe where dogs are the private property of individuals, and where it is possible to enforce it. But the Select Committee is of opinion that a similar provision would not be of any practical value in a country like India, where ownerless dogs abound in all cities, towns and villages. It would be impossible to require such dogs to be muzzled, and, so long as they were uninterfered with, it would be of little use enforcing the provision in the case of other dogs. To make the proposal at all effectual, it would be necessary to cause the wholesale destruction

of pariah dogs. But such a wholesale destruction of animals, not altogether devoid of use in native towns and villages, would partake of some barbarity, and would be scarcely justified by the possible—but by no means certain—prevention from rabies which the compulsory muzzling of private dogs might ensure. The Select Committee has accordingly felt itself unable to adopt the provision in the Bill as introduced, as it was undesirable to prescribe a rule which was not capable of general application, more especially as its introduction would undoubtedly have been considered by a large section of the public as a piece of unnecessary cruelty imposed under the sanction of the Legislature. I would only add that the non-retention of the proposed provision meets with the entire approval of His Honour the Lieutenant-Governor of the Punjab.

" The Select Committee has also altered the wording of section 138 so as to make it clear that the destruction of dogs *suspected* of suffering from rabies is only to be resorted to when there are reasonable grounds for such suspicion; and it has enabled the committee to cause suspected dogs to be confined for such period as it may deem necessary when their immediate destruction is not called for.

" To pass from measures for the protection from rabies to measures controlling the power of taxation may seem perhaps to indicate a somewhat rapid and singular transition of ideas. But, startling as the assertion may seem at first sight, there is not wanting, I think, a certain affinity between the two subjects, for both sets of measures refer to matters which, left uncontrolled, are certainly maddening in their results, and from this point of view I trust I may be excused for noticing next in order the provisions of the Bill, as now amended, regulating the power of taxation. The two subjects, moreover, have this further element in common that both appear to fall into the category of those questions which, as Mr. Ruskin remarks, ' need for their right solution at least one positive and one negative answer, like an equation of the second degree.' For instance, from the point of view of a lover of dogs or of the individual tax-payer, the matters to which I have referred would no doubt require to be dealt with from a standpoint which would most likely involve the exact negation of that which would be called for in the interests of the community. But, while fully recognising the possibility of both an affirmative as well as a negative answer being given to the problems which presented themselves to us in matters touching the imposition and realisation of taxes, we have endeavoured to handle the subject in a manner which would give reasonable protection and relief to the individual tax-payer, and at the same time afford to the body representing the community all needful means and facilities for discharging its own duties and obligations. Thus, on the one

hand, the Bill before the Council contains a series of important provisos to sub-section (8) of section 45, by which it is declared that no tax shall come into force until its imposition has been notified and not less than three months have expired from the date of the meeting at which its imposition is directed, and that taxes leviable by the year shall come into force on certain specified dates. The first two of these provisos will, it is believed, afford sufficient guarantees that no tax will be leviable until the persons who will be liable to pay it have had a reasonable opportunity of objecting to the same, while the third proviso embodies a convenient rule the absence of which gave rise to some trouble under Act XIII of 1884. On the other hand, section 55 in making it the duty of every inhabitant to furnish such information as may be necessary in order to ascertain whether he is liable to pay any municipal tax, and section 70 in providing a penalty for the evasion of payment of octroi, are intended to supply omissions in the existing Act and to strengthen the hands of the municipal committees in working the provisions of the Act relating to taxation.

"Again, in the matter of remissions in whole or in part of assessed taxation, the Bill as now amended will, it is believed, be found to adjust the rights of both parties on a satisfactory basis. The primary rule adopted in section 62 is that, if property assessed to a tax which is payable by the year or by instalments remains unoccupied and unproductive of rent throughout the year or the period in respect of which any instalment is payable, the amount of the tax or of the instalment, as the case may be, shall be remitted. But, in order to protect the committee from being defrauded of any tax that is justly due, a proviso has been added that no remission shall be granted unless notice in writing of the circumstances under which it is claimed has been given to the committee within the first month of the period in respect of which it is so claimed. The object of this proviso is to ensure that the committee will have early notice of the grounds of any claim for remission, so that it may be able to take such measures to safeguard its own interests as it may deem desirable. Sub-section (3) has also been added in the interests of the committee to make it quite clear that the burden of proving the facts entitling any person to claim a remission shall in every case lie upon him. On the other hand, sub-section (2) is intended to supply an equitable relief to the tax-payer in cases which under the existing law are unprovided for. It may often happen that property assessed to a tax may be unoccupied and unproductive of rent for a period short of the entire period for which the tax is payable. To take an extreme case—a house assessed to a tax payable by the year may be unoccupied and unproductive of rent for eleven

months out of the twelve. In such a case it would seem to be contrary to the plainest sense of justice to demand payment of the entire tax. Or, to take another conceivable case, a house may consist of separate tenements which are ordinarily used or rented as such, and there are many houses in Simla of this description, but the tax may be payable by the year in a lump sum on the whole house. Now, it may happen that one or more of these separate tenements has or have not been occupied or productive of rent during some part of the period for which the tax is payable. Here again equity seems to require that the person liable to pay the tax should obtain some remission. In order to meet such cases clauses (*a*) and (*b*) of sub-section (*2*) of section 62 have been added, and the committee is thus placed in a position of making such remission as it thinks equitable, when the property has not been occupied or productive of rent for any period not less than sixty consecutive days. This latter period has been adopted from other Municipal Acts as supplying a reasonable limit within which no claim for remission should be sustainable. But here, again, to prevent the added provisions from being applied to cases where, as in Simla and in other hill sanitaria, houses are only occupied during a certain portion of the year, although the rent obtained is intended to cover the occupation for the whole year, the Select Committee has inserted sub-section (*5*), which declares that a house shall be deemed to be productive of rent if let to a tenant who has a continuing right of occupation thereof, whether the house is actually occupied by the tenant or not. This sub-section will accordingly prevent a person from claiming a remission on the score of his house having been unoccupied—say from January to April or from November to the end of December—where the rent actually realised was intended to cover the occupation for the whole year.

"In Chapter VI of the present Bill several sections have been newly added and others have been considerably altered with the object of enlarging the powers of municipal committees in those directions where such bodies can most usefully act in the general interests of the community. Thus in the matter of the erection or the re-erection of buildings, section 88 of Act XIII of 1884 has been found in practice to be defective in several respects. It does not, for instance, prescribe any limit of time within which a person who gives notice of his intention to erect or re-erect a building, and who has not been prohibited by the committee from carrying out his intention, must proceed with such erection or re-erection, and the consequence has been that buildings have been commenced to be built or rebuilt at periods long after the committee had received notice, and when, owing to the physical condition of things in the neighbourhood having

meantime undergone considerable change, it was most undesirable that a building of the kind for which notice had been given should be erected or re-erected. In growing localities the necessity of some such limit of time must be obvious in order to prevent overcrowding. Sub-section (*6*) of section 92 of the Bill now before the Council accordingly introduces such a limit, which it is believed is reasonable in itself and will meet the difficulty that has hitherto been felt. Again, the proviso attached to section 88 of the existing Act imposed the liability on the committee of paying full compensation to the owner for any damage he may sustain in consequence of the prohibition of the erection or re-erection of any building. Now, it seems fair enough in principle that an owner of property who wishes to rebuild a portion of that property which may have fallen down, or which may be in a ruinous or unsafe condition, and the rebuilding of which may materially affect his comfort or the value of his property, should be compensated for any damage he may sustain in consequence of the committee's prohibition. But it is by no means as equally obvious that similar compensation should be given when the prohibition relates to an entirely new building, although it is right that some check should be placed on the arbitrary exercise by committees of such a power of prohibition. The present Bill therefore limits the right of an owner to demand compensation to the case of a refusal to allow him to rebuild, but in section 150, clause (*b*), the right of appeal is given to him if he feels himself aggrieved by the order of the committee. Provision has also been made for the submission of such plans and specifications as the committee may, by bye-law, require, without which it would often be impossible for a committee to exercise its powers under the section in an intelligible manner, while the previous confirmation by the Local Government of any such bye-law required by section 146 (*1*) of the Bill will prevent any such bye-law from being oppressive. In this manner the Bill endeavours to supply defects in the corresponding section of Act XIII of 1884, and at the same to provide proper safeguards for the protection of private interests.

"So also in giving committees power to regulate the manufacture, preparation, and sale of food and drink (section 137), to prevent the storage of excessive quantities of petroleum or other inflammable material (section 105), to require information of infectious diseases (section 139), to cause the removal of persons suffering from such diseases to a hospital or other place set apart for the treatment of the same (section 140), to prohibit the use of unwholesome water (section 141), and to establish and maintain fire-brigades (section 172), the

Bill is a distinctly progressive measure, and far more complete than the existing Act. Without a potential power to deal with such matters, the committees of large cities and towns would be likely to be impeded in affecting sanitary and other reforms upon which the health, safety or convenience of the public may largely depend.

"But in a province where the people have as yet little experience in the art of self-government, where municipalities exist varying from those containing 500 to those containing over 189,000 inhabitants, and where very divergent habits and customs also exist, it is essential that the principle of the division of power formulated by Montesquieu* should be carefully maintained, namely, that, 'in order that power may not be abused, it is necessary to arrange things in such a way that power shall check power.' With this object the Bill, while, as I have pointed out, considerably enlarging the powers of committees, has not omitted to vest the Local Government, Commissioners of Divisions, and Deputy Commissioners of Districts with ample powers of control. The general public has thus a guarantee that municipal committees will not be permitted to abuse the larger powers which have now been conferred upon them, but will only be allowed to exercise them in the interests and for the general welfare of the public. Nor again need there be any apprehension that the administration of municipal affairs will be unduly interfered with by Commissioners and Deputy Commissioners. These officers have been exercising substantially similar powers to those given by the Bill under the existing law, and there is no reason to suppose that they will exercise them in the future, any more than they have in the past, except in cases of real necessity. And after all there is the safeguard, which the present Bill maintains, that any interference on the part of the officers named must be forthwith reported to the Local Government, which then has it in its power of immediately rectifying any injudicious interference by modifying or rescinding the objectionable order.

L, XI, Chapter IV.

"In Chapter X of the Bill provision is made empowering a committee to authorise persons to prosecute either generally in regard to all municipal offences, or particularly in regard only to specified offences or offences of a specified class. Such a provision is much needed and will greatly facilitate the institution of prosecutions, which, under the existing law, often involves considerable trouble. The power given by section 186 to the Local Government to empower the president, vice-president or a sub-committee of the committee of a municipality of the first class to compound offences is also a new provision, and if worked judiciously ought to prevent many prosecutions of a trivial character, which otherwise

could not be avoided, from being instituted or proceeded with to a final judgment. The principle of permitting offences of a certain kind not affecting society at large to be compromised, as well by private persons as by public officers, is not, however, a new one. It is recognised in section 345 of the Criminal Procedure Code, in section 67 of the Forest Act and in section 13 of the Salt Act of 1882; and as the power can only be conferred on a committee of a municipality of the first class, and exercised either by the committee itself or by its president, vice-president or a sub-committee appointed by it, it is not a provision which is likely to lead to any abuse, and, if it does, we have added words to sub-section (5) which will enable the Local Government to withdraw the power.

"My Lord, I fear I have already trespassed largely on the patience of the Council, but I must beg its indulgence a little while longer, for there are still some provisions of general importance in the Bill which I cannot omit to specifically mention.

"One of these provisions is that contained in clause (*d*) of section 144, by which the committee of a municipality wholly or in part situated in a hilly tract is empowered to make bye-laws for rendering licenses necessary within the municipality (*a*) for persons working as job-porters for the conveyance of goods, (*b*) for animals or carriages let out on hire for a day or part thereof, and (*c*) for persons impelling or carrying such carriages. That licenses are necessary for animals or carriages let out for hire no one, I imagine, will deny, and I need say no more as to this provision But, with respect to the requirement of licenses in the cases provided for by clauses (*a*) and (*c*), the question, I admit, is a debateable one. It seems to me, however, that the true justification for requiring licenses from the classes of persons referred to in clauses (*a*) and (*c*) lies in the comparative scarcity of such unskilled labour in hill-municipalities like Simla and Murree, and the necessity that has been felt in consequence of exercising some control over persons of the classes mentioned. The absence hitherto of any power of control has given rise to loud complaints in several of these hill-municipalities, and the existing condition of things is such as to call for special measures in the interests of the general community. Looking, therefore, at the exceptional circumstances which in hill tracts hedge in the question of legislative interference in a matter of this kind, it is, we think, not a question which can be determined by the application of English or European generalizations, which are only calculated to play us false, but rather with reference mainly to the local conditions affecting the general comfort and convenience of the inhabitants in whose interests the introduction of licenses is proposed.

"The necessity for requiring such licenses has already given rise to special legislation in Bengal. Thus, the Darjeeling Coolies Act, V of 1883 of the Bengal Council, was expressly enacted to provide for the registration and control of porters and *dandiwallas* in the Darjeeling and Kurseong Municipalities in consequence 'of the rapacity and insolence of the coolies, and particularly of the *dandimen*, of Darjeeling having reached a point as to form a serious menace to the popularity and prosperity of that sanitarium.' (See Proceedings of the Council of the Lieutenant-Governor of Bengal, Vol XIV, page 41.) With the example of this legislation before it, which, it has no reason to suppose, has operated harshly upon the classes affected by the Act, the Select Committee has felt less hesitation in retaining the provision to which I have referred. In dealing with a question of this kind, it must not be forgotten that the protection of the rights of individuals is not the only purpose of a State, or interference with a private right the only evil it has to guard against The State has also to fulfil certain other important tasks in the various departments of intellectual and economical existence, and the supreme end of all law and order is the well-being of the citizens of the State. So, in the present instance, the well-being, comfort and convenience of the general community in these hill-municipalities seem to require some such restriction as that which the Bill proposes to impose on job-porters and *jhampanis* hired by the day It should be added that as licenses can only be required by a bye-law, and all bye-laws made, as this must be, under Chapter VI, must, before they come into force, receive the confirmation of the Local Government, there is a tangible guarantee that no such bye-law will be permitted to prevail which is either prohibitive or otherwise oppressive.

"Another provision which calls for special mention, and which may possibly be regarded in some quarters as an unwarrantable conversion of a mere breach of contract into an offence, is that contained in sub-section (*2*) of section 203. But here, again, legislation of the kind proposed is needed with reference to circumstances of a special character which justify departure from the general rule—perfectly sound in itself, but open to certain exceptions—that a breach of contract of service is merely the subject of a civil action for damages. It must be remembered that sweepers employed by a municipality belong to a class of servants whose functions intimately concern the public health, and they are as a class persons from whom it is exceedingly improbable any damages can be obtained. Now, such persons would not be deterred from committing a breach of contract by the mere civil consequences of such a breach. On the other hand, the wrong committed by them might result in the most serious consequences to the community, for which

the most exemplary damages would afford no adequate reparation, even if the delinquents could pay such damages. But, to quote the language of the Indian Law Commissioners in their Report on Chapter XIX of the Indian Penal Code, 'the whole property of the delinquents would probably not cover the expense of prosecuting them civilly.' Under these circumstances breaches of contract by persons of the above description appear to fall within the class of admitted exceptions to the general rule to which I have adverted as very likely to cause evil such as no damages can repair, and which may therefore, to quote again the language of the Law Commissioners, 'with strict propriety, be treated as crimes.' They have been treated as such in other provinces (*vide* section 188 of the Bengal Municipal Act, 1884; section 453 of the Calcutta Municipal Consolidation Act, 1888; and Bombay Act V of 1890), and there is no reason why they should be treated otherwise in this province. I am assured both by the present Vice-President and by the Secretary of the Simla Municipality that the inconveniences arising from sudden refusals on the part of municipal sweepers to perform their duties has been greatly felt this summer, and with the example of such strikes as those which occurred in the City of Bombay in 1889, which led to the passing of the Bombay Act, V of 1890, and to a similar strike which my hon'ble friend, Sir Philip Hutchins, informed the Council last Thursday had just occurred in Burma, it is right, I think, that we should provide by anticipation against a contingency which might at any time expose any large city or municipality in this province to the greatest risk of pestilence or other serious injury. As observed by Sir Raymond West during the debate on the Bombay Act, 'the line between the penal and the civil mode of dealing with injuries and misconduct is entirely arbitrary;' and as in the case of all other laws, so in the present case, what the legislature has to look at is the furtherance of the general good of the community. If that consideration requires that we should restrict the liberty of the individual, or visit with penal consequences breaches of contract, sound policy and sound juridical principles alike sanction recourse to such legislation. For these reasons, the inclusion of a provision such as that contained in section 203 seems to be absolutely necessary in a Bill which is intended, like the present, to regulate municipalities in the Punjab It has indeed been pressed upon us that this provision does not go far enough, and that sweepers as a class should also be required to take out licenses like job-porters and *jhampanis* hired by the day. But recognising, as we feel bound to do, the general principle that restrictions on the labour market should only be resorted to when the general interests of the community render such a course *absolutely necessary*, we have not been convinced that any such necessity exists to justify the proposed restriction

on sweepers as a class. To punish such persons of this class as are employed by a public body like a municipal committee for a breach of contract of service likely to result in serious public injury is defensible enough on the grounds I have already stated. But the introduction of a system of licensing sweepers as a class involves considerations of a far wider character, and would, we think, cause considerable public irritation if adopted. To render any such system effectual, it would require to be extended to *all* sweepers within municipal limits. Private employers would, however, have just reason to complain that a system which prevented them from employing whom they liked for their own domestic services was a very serious invasion on their civil rights, while sweepers would equally be entitled to complain of harsh treatment if they were prohibited from seeking service except on condition of possessing a license which was capable of forfeiture at the will of a municipal committee. A restriction of this kind could only be justified on the strongest public grounds, and we are not satisfied that any such grounds can be shown to exist. It appears to us that as regards private sweepers the ordinary remedy which the law allows for non-performance or negligent performance of duty is sufficient for all practical purposes, while as regards sweepers employed by committees the provision of the Bill rendering breaches of contract of service penal in the absence of a specified notice affords all the additional remedy that is needed to guard the public against any risk of pestilence or other serious injury resulting from a sweeper strike. The sweeper must be very different to every other human being if liberty, though cheered with only the proverbial Horatian crust of bread, is not as sweet to him as to any other individual, and the risk of incurring incarceration in a common jail for a period of two months, with all its attendant inconveniences, will, we are assured, act as a sufficient deterrent to prevent him from committing any breach of a contract which he may have entered into with a municipal committee. In the case of job-porters and *jhampanis* hired by the day, the matter stands on a very different footing. These persons are not servants, and they cannot be made amenable, like sweepers employed by a municipality, to criminal punishment for their rapacity. But at the same time they are persons who enjoy a sort of monopoly of labour of a particular kind; the public is obliged to employ them and is at their mercy, liable to extortion and insolence at their hands. Here then there is an obvious necessity for some expedient to check their demands and to control their conduct in the general interests of the public, and a system of licenses is perhaps the most suitable expedient that can be adopted. For these reasons the Select Committee has not felt itself able to recommend the adoption of the proposal to which I have referred.

1891.] [*Mr. Rattigan.*]

"Section 204, as the Council is already aware, has been inserted in the Bill in consequence of an urgent representation from an influential section of the inhabitants of Lahore, and is based on the provisions of a repealed Act, XXI of 1857, section 7, subsequently embodied in section 17 of Bengal Act II of 1866 and in section 43 of Bengal Act IV of 1866. It deals with a branch of a much larger question, but, so far as it goes, the section appears to be unobjectionable, and to be called for by a popular demand.

"Section 209 is intended to quiet doubts as to the legality of the house and frontage taxes which have been levied in the municipality of Simla since 1885. The circumstances which gave rise to these doubts are fully explained in the following extract from a memorandum prepared at my request by my friend Mr. Thomson, the Revenue Secretary to the Government of the Punjab, to which I have nothing to add:—

'When Act No. XIII of 1884 was passed and made applicable to the Simla Municipality, all taxes then in existence there were continued in force by section 52 of the new Act, except in so far as they might be inconsistent with the provisions of the latter.

'Another section of the same Act—No. 161—gave the Local Government power to continue in force, subject to certain conditions, all rules, regulations or bye-laws made under the former law of 1873. Accordingly, in the exercise of this power the Local Government published Notification No. 804 of 23rd October, 1884, which continued in force in Simla a number of election, sanitary and fiscal rules made under the Act of 1873. The provisions of this latter Act were of a general kind, and so it happened that the fiscal rules framed under it not only regulated the date and place of payment and other like matters, but actually imposed the taxes themselves. Rules imposing taxes could not, of course, be continued by any action under section 161 of the Act of 1884, and the notification was, it is believed, so far *ultra vires*. But this point was either overlooked at the time, or, what is perhaps more likely, it was judged better for the sake of clearness to re-publish the rules as a whole, even though some of them had necessarily become inoperative. The taxes themselves were, of course, continued independently under the operation of section 52.

'Recently the Simla Committee desired to introduce some amendments into their house-tax, and they attempted to do so by proposing an amendment of the fiscal rules continued by the notification published under section 161. The state of the case then at once became apparent It was pointed out to the Committee that these rules, so far as they purported to impose taxes, had in reality not been continued by the notification under section 161, that the house-tax was really in force under the provisions of section 52, and that if it was to be amended it must be amended by action under Chapter III of the same Act. The Committee recognised the correctness of this view of the law, but they expressed some apprehension lest the discovery that some of the fiscal rules were a dead-letter might not lead to trouble and litigation. In deference, therefore, to the

apprehensions of the committee, as an amending Municipal Act was actually under consideration, it was resolved to introduce into it a section giving an additional statutory protection to the Simla house and frontage taxes which are really in force under section 52 of Act XIII of 1884, but have hitherto been erroneously supposed to be in force under Notification No. 804 of 23rd October, 1884.'

"It only remains to refer to Chapter XI of the Bill, which, as its title indicates, is intended to apply to small towns in respect to which the main provisions of the Bill would not be suitable. Section 210, it will be seen, empowers the Local Government to constitute what are termed 'notified areas,' and section 311 enables the Local Government to impose taxation and regulate expenditure in such areas, while section 212 authorises the extension of any provision of the Act to any such area as may be deemed suitable thereto, and section 213 gives the Local Government power to cancel any notification under section 210. Ample provision is thus made for the extension of a modified form of municipal administration to 'notified areas,' and this chapter is a necessary complement to any scheme of legislation affecting municipalities in the Punjab.

"I have now gone through some of the more important provisions of the Bill, and what I have said will, I trust, satisfy hon'ble members that it is generally calculated to meet its requirements. The Select Committee cannot, of course, hope that the Bill, if passed, will be found to be so complete that the law may need no further amendment. In a fast growing province, with a wide scope for still further development in the future, and with a population for the most part active and vigorous, time must bring changes which may necessitate a further expansion of municipal government. New circumstances must arise to which measures must then be moulded. But what we may, I think, reasonably hope for is that the Bill as now amended will meet all existing requirements, and will be found to contain within itself all the necessary elements to satisfy any further expansion of municipal institutions in the Punjab which the future is likely to develop.

"My Lord, I have to apologise for the length of time I have occupied your attention, and I will only say, in conclusion, that it has been a great satisfaction to me to find myself engaged on so important a piece of legislation, affecting a province to which I am greatly attached, on the very first occasion that I have been called upon to take an active part in the business of this Council."

His Honour THE LIEUTENANT-GOVERNOR said:

"After the very full observations which have been made by my hon'ble friend, Mr. Rattigan, it will only be necessary for me to say a very few words,

particularly as he has kindly referred to my full concurrence in the various changes made in Committee on the Bill. I wish to say that I shall assent with full confidence to the Motion which will be presently brought forward that this Bill be now passed. The changes which it will make in the present law seem to me, so far as they go, calculated not only to facilitate municipal administration, but to enlarge and strengthen it. I have observed that suspicions were at one time expressed in some quarters that the new measure was to be retrogressive in character, and that it would put the committees more into leading strings than before. This idea of the scope and objects of the measure will, I hope, be seen to be quite inapplicable to the Bill both as introduced and as it now stands. The new provisions which we propose to enact do not involve the comprehensive working out of any new principle. They are merely supplementary to the present law. Modest as they are in plan, their general tendency, almost without exception, is not to curtail municipal action, but to confer greater power and increased responsibility upon municipal committees. In fact, this development of function is so considerable that in some instances it is only the most advanced municipalities which will be able and willing to undertake all the duties which the law permits to be entrusted to them. To meet this condition of affairs provision has been made that several sections of the new law shall only operate in a municipality when specially extended thereto by the Local Government, and the exercise of this power by the Local Government is itself made subject to an initial action on the part of the committees, so that no municipality can be placed under any of these sections except on the request of its own representative body. The committees are thus practically receiving power to decide whether they will adopt certain provisions of the law or not. This is not only a substantial increase of authority, but will have perhaps some tendency to raise the level of municipal debate. The dry succession of executive details may be enlivened by a deliberation as to whether it is on principle desirable to undertake a new duty and incur a new responsibility. The Local Government, indeed, retains a negative voice, but this check will in practice be a check *for* the people and not *on* the people. It is never likely to be exercised in regard to any well-considered request for an extension of function based upon general popular consent. But, if any over-zealous committee were to attempt to introduce into a town advanced arrangements for which it was not ready or fit, the Local Government would probably feel disposed to protect the alarmed inhabitants from the too hasty energy of their representatives.

[*The Lieutenant-Governor.*] [8TH OCTOBER,

"Sections 7 and 8 in the Bill have at first sight a somewhat drastic appearance. It may therefore be as well to explain what their exact force really is. Under the law as it now stands the Local Government has power to regulate the number of elected and appointed members upon a committee as the public interests may require. The new Bill makes no change in this respect, but sections 7 and 8 are intended to provide that this power shall not become practically ineffectual through delay. At present the Local Government may decide that the public interest requires an elective in place of a nominated committee. But so long as the nominated members hold their seats, it cannot order a single election. And this hindrance to the change of system deemed advisable may endure for three years. Similarly, the state of feeling in a town may be such as to render it absolutely necessary to suspend temporarily the operation of the elective system, and to appoint a nominated committee. Here again, as the law at present stands, if elections have been recent, a change immediately desirable might be postponed for several years. This state of matters is clearly in need of amendment. In fact, sections 7 and 8 are rather sections of procedure than sections of substantive law. No increased power of decision is essentially given to the Local Government, but a process is provided under which the decisions which it can give under the powers which it already possesses can be immediately applied and made effectual. Such a process is obviously necessary.

"Of the Bill as a whole it may be said that it will be a not inconsiderable improvement upon the present Act. Chapter XI in particular (which is new) will, I think, be very useful if it is applied with proper moderation and discretion. No attempt will be made to stretch the provisions of the chapter to cover doubtful cases, or to harass communities which are essentially rural or agricultural with unsuitable and injurious imitations of municipal institutions. If these precautions are observed, and if we are content with slow and steady progress, I have little doubt that without arousing any discontent measures will be taken under this chapter by which the health and comfort of many small towns in the Punjab will make substantial progress.

"I only wish to add that, being responsible for the original draft of this Bill, which is so closely connected with the daily life of the townspeople of the Province, it has been to me, and I believe to the educated townspeople of the Province, a source of satisfaction and confidence that the Council in dealing with the measure has had the assistance of my friend Mr. Rattigan. For by his long experience of the Punjab, more especially in regard to the life of its great cities,

he is peculiarly well fitted to act as the guardian of popular interests and the exponent of popular wishes in all matters connected with municipal administration."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER said:—"I have been asked by my hon'ble friend Mr. Rattigan to move an amendment for which I believe, as no notice has been given of it, I must obtain the consent of the Council to move without notice. It has been represented that committees may be put into some difficulty by reasons of persons liable to pay taxes, such as occupiers of houses and the like, in any municipality, leaving the municipality without paying such taxes and taking all their property away with them, and that, as the law stands, or as it would stand if this Bill be passed as it is framed by the Select Committee, there cannot be any remedy against such persons except by a civil action in the district in which they may be resident It has been suggested to us—and the Select Committee are agreed that it would be a desirable amendment, and one which if it had been brought to their notice in time would have been made by them—that the law should be extended so that the same remedy should be given in the place where the defaulter is found as the committee would have had if he had continued to remain in the municipality. It is therefore proposed to introduce certain words in section 201 of the Bill in order to meet such cases. By section 201, 'any arrears of any tax or fee or any other money claimable by a committee under this Act may be recovered, on application to a Magistrate having jurisdiction within the limits of the municipality, by the distress and sale of any moveable property within those limits belonging to the person from whom the money is claimable.'

"I propose to alter that in this way:—after the word 'municipality' to add 'or in any other place where the defaulter may for the time being be resident,' and instead of the words 'within those limits belonging to the person from whom the money is claimable' to substitute the words 'within the limits of his jurisdiction belonging to such person.'

"The only result of this amendment will be that if a man should leave a municipality without paying his taxes, and go elsewhere, he will be made liable to pay them by the Magistrate of the district instead of its being necessary first of all for the municipality to establish a right to the taxes, and then to bring a civil suit founded on that decision for their recovery—a proceeding which, I need not say, is attended with a good deal of circumlocution which it is very desirable to remedy."

The Hon'ble SIR PHILIP HUTCHINS suggested the desirability of omitting the word "defaulter" and of substituting for it the words "the person from whom the money is claimable."

The Hon'ble SIR ALEXANDER MILLER said that the word "defaulter" was used elsewhere in the Bill, but he saw no reason why the suggestion made by the hon'ble member should not be accepted. The sentence would therefore run "or in any other place where the person from whom the money is claimable may for the time being be resident."

The amendment was then put and agreed to.

The Hon'ble MR. RATTIGAN moved that the Bill as amended be passed. He said that the several provisions of the Bill had already been so fully dealt with that he did not think it necessary to say anything further in support of this motion.

The Motion was put and agreed to.

LOWER BURMA MUNICIPAL ACT, 1884, AMENDMENT BILL.

The Hon'ble SIR PHILIP HUTCHINS moved that the Report of the Select Committee on the Bill to amend the Lower Burma Municipal Act, 1884, be taken into consideration He said:

"The first section of the Bill merely contains a few definitions to which no exception has been taken.

"The second provides for the levy of tolls on vehicles and animals entering the municipality. It seems that some people keep their carriages outside municipal limits, and thus evade payment of what is popularly called the 'wheel-tax.' The only way of meeting the difficulty appears to be to levy tolls on all vehicles entering the municipality, except such as have paid the regular tax. This is the system which prevails throughout the Madras Presidency, and it seems eminently fair. Section 8 of the Bill contains a subsidiary provision regarding the exhibition of tables of tolls.

"Section 3 merely extends the power of the municipality to incur any expenditure which the Local Government may consider proper, even though it may not be obviously and immediately calculated to promote the welfare of the inhabitants.

"Section 5 will only come into force in municipalities to which the Chief Commissioner may see reason to extend it by a special notification. It is designed to enable the committee to regulate the mode of constructing buildings and forbid the use of dangerous materials in crowded towns.

"Sub-section (*4*) of the fourth section defines the expression 'erect or re-erect any building.'

"All these provisions are identical with corresponding clauses in the Punjab Bill which the Council has just passed into law.

"The other sub-sections of section 4 relating to the erection of new buildings are very nearly identical with provisions in the Punjab Act, and the same remark applies to section 6 and the first two sub-sections of section 7, which deal with privies. No objection has been taken to any of these clauses, and the Chief Commissioner considers them better adapted to Burma than the somewhat more elaborate provisions of the Act just passed.

"Only sub-sections (*3*) and (*4*) of the seventh section remain, and to these certain objections have been put forward. Shortly stated, the former imposes on house-holders the obligation, upon the requisition of the committee, to connect their premises with the municipal sewers, while under the latter the connection must be carried through any intervening land unless the Government or other proprietor of such land refuses to allow this. The obligation, however, will only extend to houses situated within one hundred feet of a sewer, so that no unreasonable expense will be entailed on the owners of house-property.

"It has been urged that the obligation is a novel one, and that it is not imposed on the inhabitants of the presidency-towns, the conditions of which are very similar to those of Rangoon; but hon'ble members, if they refer to the margin of sub-section (*3*), will see that it is taken (and it has been adopted almost *verbatim*) from the Madras Municipal Act of 1884. The objectors have referred more particularly to the Bombay Act, but that also recognizes very much the same principle. It obliges all house-holders to remove to a municipal receptacle or depôt the filth collected on their premises, unless the Commissioners elect to do this by their own servants, in which case a scavenging-tax is levied. It is the duty of all municipalities to provide for the ultimate removal of filth which has been deposited in public depôts, and they do this either by sewers or by a special service; but everywhere it rests on the house-holders to provide for the conveyance of the filth from their premises to the

depôt or sewer, and, where there is such a drainage-system as has now been established in Rangoon, this can only be done satisfactorily by means of a drainage-connection.

"It has been urged that certain inveterate habits of the Burmese which I need not here particularize will prevent the drainage-system from working satisfactorily, and that in that case the construction of connections will only cause useless expenditure. Hon'ble members have doubtless read Major Temple's memorandum on this subject, and will probably agree with the Chief Commissioner's opinion that it has sufficiently disposed of the objections raised. It will be seen from Mr. Man's representations, made on behalf of himself and other house-holders of Rangoon, that he asks no more than that power be reserved to the Chief Commissioner 'to stay the municipal hand' until he is satisfied that the drainage will be effectual. This request seems reasonable enough, and we have accordingly provided that the two sub-sections in question shall only be applied to particular municipalities by a special order of the Chief Commissioner. All rules regarding the manner in which drainage-connections are to be made or maintained will also require the approval of the Local Government."

The Motion was put and agreed to.

The Hon'ble SIR PHILIP HUTCHINS said:

"I have now to propose two amendments in the Bill as reported by the Select Committee. I gave notice of them last week, when I also stated the reasons which make them desirable. The first amendment is that for section 7 of the Bill, as amended, the following section be substituted, namely:

Substitution of two new sections for section 92, Act XVII, 1884

"7 For section 92 of the said Act the two sections following shall be substituted, namely.

Closing, alteration and repair of privies and the like.

'92 (*1*) The committee may, by notice, require the owner or occupier of any building or land to close, repair, alter, or put in good order any water-closet, latrine, urinal, privy, drain, cesspool, trap, sink or sulliage-tray belonging thereto.

'(*2*) The committee may, by notice, require any person who constructs any new water-closet, latrine, urinal, privy, drain, cesspool, trap, sink or sulliage-tray without its permission in writing or contrary to its directions or regulations or to the provisions of this Act, or who constructs, re-builds or opens any water-closet, latrine, urinal, privy, drain, cesspool, trap, sink or sulliage-tray which it has ordered to be demolished or stopped up or not to be made, to demolish the water-closet, latrine, urinal, privy, drain, cesspool, trap, sink or sulliage-tray, or to make such alteration therein as it thinks fit

1891.] [*Sir Philip Hutchins.*]

'92A. (*1*) Where any building or land situated within one hundred feet of one of the sewers or drains set apart by the committee for sulliage, sewage or other offensive matter is at any time not drained to the satisfaction of the committee by any or a sufficient drainage-connection with such sewer or drain, the committee may by notice require the owner of such building or land to make and maintain a drainage-connection with the sewer or drain in such manner as the committee may, by rule made with the sanction of the Local Government, direct.

Making and maintaining drainage-connection with sewer or drain.

'(*2*) The provisions of sections 109 and 110 of this Act shall apply to any default in compliance with any such requisition notwithstanding that part of the land through which the said drainage-connection is required to pass may not belong to the person so making default, unless he shall prove that the default was caused by the act of the owner or occupier of such last-mentioned land.

'(*3*) This section shall not take effect in any municipality until it has been specially extended thereto by the Local Government at the request of the committee.' "

"This amendment is merely formal, the object being to show that what is now sub-section (*4*) of section 7 is not intended to have any effect except in connection with the preceding sub-section on which it is dependent, and in those municipalities to which this third sub-section may have been extended. The effect of the amendment is simply to cast these two sub-sections into a separate section, which is numbered 92A, with a proviso at the end that it shall not take effect in any municipality until it has been specially extended thereto by the Local Government at the request of the committee. In other respects the wording is identical with that recommended by the Select Committee."

The amendment was put and agreed to.

The Hon'ble SIR PHILIP HUTCHINS continued:

"The other amendment which I have to propose is as follows

that after section 8 of the Bill, as amended, the following section be added, namely:

"9. After section 132 the following section shall be added, namely:

Addition of new section after section 132, Act XVII, 1884

'132A. (*1*) In the absence of a written contract to the contrary, every sweeper employed by a committee shall be entitled to one month's notice before discharge or to one month's wages in lieu thereof, unless he is discharged for misconduct or was engaged for a specified term and discharged at the end of it.

Obligation of municipal servants to discharge their duties.

'(2) Should any sweeper hereafter employed by a committee in the absence of a written contract authorising him so to do and without reasonable cause resign his employment or absent himself from his duties without giving one month's notice to the committee, or neglect or refuse to perform his duties or any of them, he shall be liable to imprisonment which may extend to two months.

'(3) The Local Government may, by notification, direct that, on and from a date to be specified in the notification, the provisions of sub-sections (1) and (2) with respect to sweepers shall apply also to any specified class of servants employed by any committee whose functions intimately concern the public health or safety.'"

"This amendment involves a substantial addition to the Bill, but it is an addition which every one must admit to be necessary in view of the exceedingly serious consequences which must ensue from anything like a strike on the part of municipal scavengers. A similar provision has been made in several other Municipal Acts, as has just been mentioned by my hon'ble friend Mr. Rattigan. That which I propose to adopt is copied *verbatim* from the Punjab measure which has just been approved by this Council upon his motion."

The amendment was put and agreed to.

The Hon'ble SIR PHILIP HUTCHINS also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

INLAND EMIGRATION ACT, 1882, EXTENSION BILL.

The Hon'ble SIR PHILIP HUTCHINS also moved that the Bill to extend the Inland Emigration Act, 1882, be taken into consideration. He said:

"When I introduced this Bill last week, I stated that the Central Provinces seemed a promising field for the recruitment of labourers for the tea-gardens of Assam, and that the Chief Commissioner had agreed to the Act of 1882 being extended throughout the territory under his administration. The completion of the Bengal-Nagpur Railway has opened up new sources of supply of the kind of labour most wanted, for the climate of Assam suits natives of hilly tracts, such as I understand form a large part of the Central Provinces, far better than those who have been nurtured in the Gangetic Valley.

"I also mentioned that advantage had been taken of the opportunity to meet the wishes of the Madras Government, expressed some two years ago when the

Ganjam famine had caused a sudden development of emigration from the affected areas, that the Act should be made capable of being put into force in selected districts of the Madras Presidency.

"The question of thus extending the operation of the Act first came before me some months ago, but I thought it better not to undertake any measure of the kind while the working of the Act was under examination, and it remained uncertain whether the existing system would be maintained. Your Excellency and my hon'ble colleagues are aware that it has now been determined that the Act must be continued in force, and that no very radical changes are called for. I hope the amendments which have commended themselves to the Government of India will shortly be made public, and of course all modifications which may be introduced will apply wherever the Act may have been extended. In these circumstances I see no reason why this Bill should not be passed at once. It follows our settled policy of promoting emigration from areas which are either overpopulated or liable to famine to others enjoying more favourable conditions. It is a well-known fact that a very large number of the labourers recruited for Assam settle down there permanently."

The Motion was put and agreed to.

The Hon'ble SIR PHILIP HUTCHINS also moved that the Bill be passed.

The Motion was put and agreed to.

The Council adjourned *sine die.*

L. PORTER,

SIMLA; *The 9th October, 1891.* } *Offg. Secretary to the Government of India, Legislative Department.*

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